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RIGHT OF MUNICIPALITY TO REGULATE THE FARES OF STREET RAILROADS.

The city of San Antonio, in the great state of Texas, conceived the idea that it would promote the education of its children and therefore promote the general welfare to pass an ordinance compelling street railroads to carry school children at half rates. The idea was carried into execution and the ordinance duly passed. The street railroad company, however, refused to comply with the ordinance but claimed that it was an unauthorized and unconstitutional attempt to deprive it of its property without due process of law and an unlawful interference with the terms of its contract with the state. A proceeding was instituted to mandamus the company to comply with the ordinance, which was successful in the lower court and affirmed on appeal in the recent case of San Antonio Traction Co. v. Altgelt, 81 S. W. Rep. 106. The court of civil appeals of Texas in rendering its decision in this case enlightens the profession on this interesting question by the following observations:

"It would seem, however, that inasmuch as the city of San Antonio made no contract with the San Antonio Street Railway Company regulating or controlling the amount to be charged for fares over its line until March 16, 1899, if the ordinance of that date authorizing said company to charge 5 cents fare can be deemed a contract, which was 23 years after the adoption of the present constitution, which specially provides that all privileges and franchises granted by the legislature or created under its authority shall be subject to its control, no obligation of contract between the city and said street railway company, or between the state and such company, was violated or in any way impaired by the act of the legislature in question. For the right, by virtue of the ordinance of March 16, 1899, of the San Antonio Street Railway Company to charge 5 cents fare for one continuous ride over any one of its lines, did not vest until after the present constitution went into effect, and therefore such regulation of fare was subject under it to legislative control. Adams v. Yazoo, etc., Ry. Co., 77 Miss. 194, 24 So. Rep. 200, 317, 28 So. Rep. 956, 60 L. R. A. 33; *Id.*, 180 U. S. 1, 21 Sup. Ct. Rep. 240, 45 L. Ed. 395; G., H. & S. A. Ry. Co. v. Texas, 170 U. S. 226, 18 Sup. Ct. Rep. 603, 42 L. Ed. 1017.

But however this may be, it not being shown that appellant was incorporated prior to the time the constitution of 1876 went into effect, it must be considered to have taken its charter and all the provisions it contains subject to the general law of the state and of such changes as may be made in such general law, and subject to future constitutional provisions and future legislation. Pennsylvania Ry. Co. v. Miller, 132 U. S. 75, 10 Sup. Ct. Rep. 34, 33 L. Ed. 267.

The legislature has the power to regulate the rates of fare of a street railway company in the absence of any provision in its charter relinquishing that right (Wood on Railroads [Miner's Ed.] 1658; Nellis, St. Railroads, 40), provided, however, the rates established are not so unreasonable as to practically destroy the value of the property of the corporation, and thereby depriving it of its property without due process of law, and denying it equal protection of the law. Covington & L. Turnp. Co. v. Sanford, 164 U. S. 578, 17 Sup. Ct. Rep. 198, 41 L. Ed. 560; St. L., etc., R. Co. v. Gill, 156 U. S. 649, 15 Sup. Ct. Rep. 484, 39 L. Ed. 567. This right, under the present constitution, cannot, as we have seen, be relinquished by a provision in the company's charter; and it is not contended, and there is nothing in the evidence tending to show, that the rate of fare which appellee claims he is entitled to under the act of 1803 is such as not to leave to the company a sufficient income to pay repairs and a fair income on its investment."

NOTES OF IMPORTANT DECISIONS.

BENEFIT SOCIETIES—SERVICE ON OFFICERS OF SUBORDINATE LODGES.—In most states, including the state of Texas, there are provisions for foreign benefit societies as well as insurance companies to constitute the state insurance commissioner their agent within the state on whom service may be had in any action that may be commenced against it. Is this statutory provision merely cumulative of the general law entitling the proposed litigant to obtain service on local agents

of the order, i. e., the officers of the subordinative lodges? In holding to this effect in the recent case of Bankers' Union v. Nabors, 81 S. W. Rep. 91, the Supreme Court of Texas says:

"The primary object of these benevolent orders and regular or old-line insurance companies is the same—the writing of insurance. The end in view is attained by the prosecution of different methods. The latter class, through agents appointed for the purpose, and located at different points in the territory where they desire to do business, solicits and writes the policies, subject to the approval of the home office, for established premium rates, varying according to the hazard of the risk. The policy of the class with which we are dealing is to organize and establish inferior lodges, conducted and presided over by officers elected from its membership, whose duty it is to solicit members, and whose election results in the issuance of insurance policies for the amount prescribed by the laws of the order, upon the payment of certain fees and dues, representing the premium charged. It has been repeatedly held that service upon such local agents of ordinary insurance companies is service upon the company, in all jurisdictions where service is authorized upon 'local agents.' We are aware of no good reason why the same rule should not apply to benevolent orders conducted on the plan adopted by appellant. The relation of a subordinate lodge and its officers to the supreme lodge was involved in the case of Knights of Pythias v. Bridges (Tex. Civ. App.), 39 S. W. Rep. 333, and, in discussing the question, Judge Collard said: 'Bridges was admitted as a member of the local lodge under the forms and according to the laws of the order as promulgated by the supreme lodge and the board, and it was organized by express warrant of the board. We do not hesitate to say that the inferior lodges and their officers, acting in the scope of their authority, were the agents of the order, and that their knowledge of facts affecting their duties would be notice to the supreme lodge of such facts, as in case of agents of ordinary insurance companies.' Dixon v. Order of Railway Conductors (C. C.), 49 Fed. Rep. 910, was a suit to vacate a judgment taken on service had on the secretary of a local lodge of the order. It was held that the service was sufficient. See, also, Thompson's Commentaries on Corporations, vol. 6, § 8039.

But it is contended by appellant that since the passage of the act of 1899 (Laws 1899, p. 195, ch. 115) relating to fraternal beneficiary associations, service of citation in this class of cases must be had on the Commissioner of Insurance. The act referred to prescribes the conditions upon which such foreign associations may do business in this state, and requires that it shall appoint the Commissioner of Insurance of Texas its agent, upon whom service may be had in the event of suit against it. The act does not expressly repeal the general lawauthorizing service of citation on 'local agents' of foreign coporations, and we are of opinion it does not do so by implication. It is believed the statute of 1899 is merely cumulative of the general law upon the subject, and service in accordance with either statute is legal service and sufficient."

RES ADJUDICATA — IDENTITY OF ISSUE. — It is sometimes difficult to determine the question as to the identity of two causes of action where the plea of *res adjudicata* is offered as a defense to the second action. On this point the recent case of Moore v. Snowball, 81 S. W. Rep. 5, is interesting.

In this case plaintiff sued in trespass to try title, alleging that defendant had purchased the property at execution sale under a judgment for taxes which was void because no service was had and because the property was ordered sold in bulk, and prayed that the judgment and all proceedings thereunder be annulled, and that defendant be enjoined from attempting to enforce them. Defendant had judgment, and thereafter plaintiff brought another suit to set aside the sale, admitting title in defendant, but alleging that the sale was void because of attendant irregularities which caused the property to be sold for a grossly inadequate price, and praying, because of such equity, to regain title by reconveyance. The supreme court of Texas held that the judgment in the first suit was not *res adjudicata* in the second.

In its splendid opinion filed in this case, the court said: "Different evidence is necessary to sustain the two actions, and different judgments are applicable to them, one in favor of the plaintiffs in this case being entirely consistent not only with the correctness of that rendered in the former, but with any that might have been rendered therein on the issue of title, had it been unrestricted by special allegations. That the relief now sought could have been obtained under the pleadings in the former action will not be claimed. On the other hand, it must be admitted that by appropriate pleadings the plaintiffs might have joined together the cause of action which they attempted to set up and that which they now assert, and, by alternative prayer, could have enforced the latter when they failed in the former. This is true partly because of the abolition of the distinction between law and equity, and partly because of the liberal allowance in our law of the joinder of different causes of action, whether legal or equitable. Upon an issue of title the plaintiff or defendant may, of course, recover upon that which constitutes a title, whether it be legal or equitable; and it may be that in support of such an issue any title of either kind which the party has must be adduced. Judgment on the merits settles the title, and neither party will be heard afterwards to say that he had a title which he did not adduce, whether his failure was due to the condition of his pleading or his evidence. But the attempt here is to set up that which was not a title, which was inadmissible in evidence upon the issue of title, and which constitutes, as it has been

defined by the decisions of this court, a cause of action different from that formerly adjudicated. The question, therefore, is, were the plaintiffs bound to assert it, because it was a right respecting the property sued for, and one which the law regulating joinder of actions permitted them to connect with their former action, or otherwise have it cut off by the judgment in favor of the defendants on the issue of title? It is claimed that they were, upon the principle, so often and so broadly laid down, that a judgment 'is not only final as to the matter actually determined, but as to every other matter which the parties might litigate in the cause, and which they might have had decided.' Foster v. Wells, 4 Tex. 104; Nichols v. Dibrell, 61 Tex. 541; Freeman v. McAninch, 87 Tex. 132, 27 S. W. Rep. 99, 47 Am. St. Rep. 79. This we understand to mean only that all matters which properly belong to a cause of action asserted in the pending suit, such as will sustain or defeat, in whole or in part, that cause of action, must be produced or be barred by the judgment, and not that all the different causes of action a party may have respecting the same property must be joined, because they may be, in one proceeding. To illustrate this, if the plaintiffs in the former suit could have shown some other title to the property, or that the judgment or sale was absolutely void for some other reasons than those set up, they could not now aver them, because the title and the nullity *vel non* of the judgment and sale were put in issue, and anything that would have established either would have established plaintiffs' title, and they were bound to bring forward all such matters. Weirlein v. New Orleans, 177 U. S. 401, 20 Sup. Ct. Rep. 682, 44 L. Ed. 817. But to so apply this doctrine as to embrace within an adjudication of the title to property every cause of action which the party had at the time of its rendition respecting such property, when only one of them was set up, would, in view of the liberality of our law allowing joinder of actions, be equivalent to saying that but one suit about the same property can be prosecuted to judgment upon its own merits between the same parties—a proposition no one will assert. Under such a conception of the law, a plaintiff who had been defeated in an action of trespass to try title would not be allowed afterwards to show that that which he had supposed to be a title was only a mortgage, and to foreclose it, or that, though not entitled to recover the land, he was entitled to the enforcement of a vendor's lien, or to specific performance of an executory contract. For, under our procedure, a plaintiff in doubt as to his true rights might seek to recover land upon an allegation of title, and, in the alternative, to enforce any one of these supposed claims, or many others that might be instanced. Courts and text-writers have often found it necessary to so qualify the broad statement of the rule above quoted. In the case of Aurora City v. West, 7 Wall. 102, 19 L. Ed. 42, Mr. Justice Clifford thus states the doctrine: 'Where every objection urged in the second suit was open to the party within the legitimate scope of the pleadings in the first suit, and might have been presented in that trial, the matter must be considered as having passed in *rem judicatum*.' Says Freeman: 'An adjudication is final and conclusive, not only as to the matter actually determined, but as to every other matter which the parties might have litigated and have had decided as incident to or essentially connected with the subject-matter of the litigation, and every matter coming within the legitimate purview of the original action. * * * The general expression, often found in the reports, that a judgment is conclusive of every matter which the parties might have litigated in the action, is misleading. What is really meant by this expression is that a judgment is conclusive upon the issues tendered by the plaintiff's complaint. It may be that the plaintiff might have united other causes of action with that set out in his complaint, or that the defendant might have interposed counterclaims, cross-bills, and equitable defenses, etc. * * * But as long as these several matters are not tendered as issues in the action, they are not affected by it.' Freeman on Judgments, 249; Black on Judgments, 732; Am. & Eng. Ency. Law (2d Ed.), pp. 766, 775, 784. This we understand to be the true doctrine, and the principle that all matters are concluded that might have been litigated has not been differently applied by the judgments of this court in cases cited by appellants. The statement has always been made with reference to some matter that was comprehended within the issues in the former action, and not concerning causes of action distinct from those before asserted and adjudicated. If, as we have said, the matter now set up by plaintiffs constitutes a different cause of action from that which they formerly sought to maintain, they were not, under the authorities cited, bound to enforce it in their first action. Freeman on Judgments, 256. That it is such, we think the decisions of this court leave no doubt. Nothing but evidence of title was admissible or could have been made admissible under the former issues without the introduction of a different cause of action. Ayres v. Duprey, 27 Tex. 604, 605, 86 Am. Dec. 657; Haskins v. Wallett, 63 Tex. 218, 68 Tex. 418, 4 S. W. Rep. 596, 2 Am. St. Rep. 501; Rippetoe v. Dwyer, 49 Tex. 506; Fuller v. O'Neal, 69 Tex. 352, 6 S. W. Rep. 181, 5 Am. St. Rep. 59; C. T. & M. C. Ry. Co. v. Titterington, 84 Tex. 224, 19 S. W. Rep. 472, 31 Am. St. Rep. 39; Rutherford v. Stamper, 60 Tex. 450; Fisher v. Wood, 65 Tex. 205. The substance of these decisions applicable here is that a right of action to set aside such a deed as that defendants held, not void, but merely voidable by direct attack and upon equitable terms, cannot be enforced under the pleadings in the action of trespass to try title. If that proposition is sound, and it is firmly established, it inevitably follows that such a right is not comprehended in the issue of title; for if it were, it could, of

course, be made effectual as a ground of recovery or of defense in such an action. While a plaintiff is permitted under our system to invest one proceeding with all the characteristics of both kinds of actions, and, if he fail in one, to recover upon the other, it is still true that the causes of action are distinct, the judgments applicable to them are different, and the allowance of one denies the existence of the other.

A PRACTICAL QUESTION IN THE LAW OF FRAUDULENT CONVEYANCES.

Most of the states have statutes declaring that all mortgages, deeds of trusts and deeds to land which are unrecorded shall be void as to purchaser for valuable consideration without notice, and as to all creditors. But many of the decisions have restricted the general words of this statute, particularly as to creditors by holding that the words "all creditors" contained in these statutes means *lien creditas*—that is creditors who have acquired liens on the specific property conveyed or incumbered.[1]

It would seem from the reading of thes statutes, and from the reason of the thing—that the lawmakers in enacting these statutes meant what they said—and intended that these unrecorded conveyances should be void as to "all creditors" without notice of the conveyance. And some of the early dissenting opinions contended strongly for this view of the matter. But the prevailing interpretation now is that the words "all creditors" in this statute mean lien creditors. This is only one instance of what seems to be a common thing with many judges, whereby if there be a plain open construction, especially of statutes and words, and also another construction, which can be reached only by hair splitting metaplysical construction, they will adopt the strained construction instead of the open natural one. But taking the view that the words "all creditors" in these statutes mean lien creditors what will you do with a case like this: A is president of a bank. He becomes heavily indebted to the bank, and in order to secure this indebtedness to the bank, he executes and delivers to the bank a secret deed to all his A's property. The bank does not have this deed recorded, holds the same in secret for years and never has it recorded until after it's death. And during all these years, the remaining years of A's life, the bank suffers A to remain in open notorious possession of the property, suffers A to exercise all these outward acts of receivership over the property up to the time of his death which he had received and enjoyed before he made the deed. A being thus left by the bank inpossession of the property many years, and being supposed by the public to own the same, he goes into the money market and borrows money merely on his promissory note. Not only does his possession of the property enable him to get a false credit, but by the course of dealing between A the president of the bank and the bank, A had always obtained all his money from the bank. The bank was his only creditor up to the time of the aforesaid conveyance and the fact that he owed the bank was kept diligently secret as well as the fact of the conveyance after the same was made. In this case there is nothing to place the creditors on notice. A, at the time he borrowed the money from these general creditors was apparently a very wealthy man. He was in the open and notorious possession of a large amount of real estate, consisting among others, of one platil plantation of five hundred acres, valuable city residence property, as well as other property in full possession of all this with none to dispute his right so far as these general creditors knew or believed. A had inherited a large property, was a man of high character and standing, always paid his debts (the debt to the bank having been always kept secret). With this high prestige, he went into the money market, after he had made the aforesaid secret deed of all his property, but remaining in possession of the property conveyed, and borrowed all the money he needed on merely his personal unsecured note.

The question is—do the registry laws suffer and permit a man to make a secret deed to all his property, remaining in possession of the property conveyed, then go into the money market and borrow money from parties ignorant of the deed, and mislead by his continued possession of the property, and then allow his vendee to set up this secret deed to defeat the claim of the creditor for

[1] Stimson's Am. St. Law, § 1620; Webb Record of Title, § 163; Loughridge v. Bowland, 52 Mo. 546; Karns v. Olney, 80 Cal. 90.

the money loaned by them to the vendor?

In a recent valuable work it is laid down as law—that if a man makes a conveyance of his property with the present intention of entering into business, or of creating debts, with the knowledge that the conveyance will probably affect his ability to pay his debts, the conveyance will be void as against the persons with whom such debts were contracted.[2]

In the case above stated the debtor made a conveyance of all his property. After the conveyance was made he continued to carry on the large business which he had been engaged in before the deed was made. The greater part of his business consisting of large planting interests, and requiring much money. Having deeded the bank all his property he had no further credit with the bank—and must needs get money from somewhere. Most of the money borrowed was by checks on the bank of which he was president and paid to him by the bank across its counters, so that the bank must necessarily have known that he was borrowing money, as plainly as if he had told the fact to the bank. The bank knew that it required a large amount of money to carry on the business he was operating. It knew that the conveyance to itself had divested him of all his property, and it knew further that he was ever and anon getting money through checks drawn on itself. A was engaged extensively in raising of cotton, both before and after he executed and delivered to the bank the aforesaid conveyance and cotton planting, owing to the uncertainty of the seasons, the delicate nature of the young plant, and the like, may be well considered a hazardous business, and having divested himself of all his property, A knew that he would be compelled to borrow money to carry on this business. So the case comes in every particular within the principle of the rule of law just announced.[3]

A has a right to deed all his property to B and, under the decisions B need not record the deed, except as against lien creditors. But he has no right to make a conveyance of all his property to B remain in possession of the property and go into the market and borrow money. Because the remaining in possession of the property gives A all the credit he ever had, and becomes a snare and pit fall to persons with whom A deals. Indeed—the case is not altered. Should A on deeding the property to B execute secret rent notes to B for what does the public know of these secret rent notes. The world sees A in the same possession and dominion of the property that he had always exercised. He calls himself the owner. The bank suffers A to hold himself out to the world as owner of thee state conveyed. As lord paramount. And the bank is estopped to deny a state of facts which it has been factor in bringing about.[4]

It should be borne in mind that in mercantile and trading communities there is a large amount of personal credit, without security, except that security which the visible unincumbered possession of property affords. And if men can make secret deeds to their property, whilst they still retain the visible possession and ownership of such property, then indeed verily, the law becomes a delusion and a snare. That such was not the intention of the original framers of these recording statute cannot for a moment be doubted, else they would not after having specified so particularly purchase for valuable consideration without notice, have used the words "and all creditors." Yet the courts have by a process of artificial reasoning interpolated into this statute the word "lien," making it read "all lien creditors."

We cannot regard this interpolation of the courts other than a species of judicial legislation. It was the same as if the statute had been amended.

These decisions holding that these statutes only meant to make an unrecorded deed void as to lien creditors make a distinction between the obligation and binding effect of debts, giving the lien debts the preference, where in truth there is no such natural distinction. Every creditor is supposed to extend credit

[2] Tiffany on Real Property, Vol. 2, § 495; Winchester v. Charton, 12 Allen, 606; Case v. Phelps, 39 N. Y. 164; Redfield v. Buck, 35 Conn. 328; Snyder v. Free, 114 Mo. 360; Mourn v. Smith, 79 Pa. St. 499.

[3] Churchill v. Wells, 7 Cald. (Tenn.) 364; Rudy v. Austin, 56 Ark. 73; Maritz v. Hoffman, 35 Ill. 553; Mackay v. Douglass, L. R. 14 Eq. 106; *Ex parte* Russell, 19 Ohio, 588; Twynes Case, 3 Coke, 80b.

[4] Brandt v. Va. Coal Co., 3 Otta. 326; Pulsford v. Richard, 17 Beav. 149; Bridge's Case L. R. 9 Eq. 74; Trenton Bank Co. v. Sherman, 24 Alb. L. J. 390.

with reference to the debtor's ability to pay. This is as much true of the general creditor, as the lien creditor, and the general creditor can be as much deceived by the debtor's visible possession and apparent ownership of property, as the lien creditors can by the debtor having previously made an unrecorded deed to the land which he encumbers. But the decisions which hold an unrecorded deed good as to general creditors if based on a valuable consideration, contemplate that a *bona fide* change of possession shall accompany the deed. They never contemplated such a state of facts as those mentioned *supra*, as the decisions cited here show.[5]

The transaction mentioned herein between A and the bank is void independent of the recording statute. Such a transaction is void on the general principles of equity jurisprudence. It is also void, or nugatory on the principle of equitable estoppel.

A man is estopped to deny another's ownership of property when he has suffered such other to exercise all the visible rights of ownership, and some of the decisions go so far as to hold that if the facts are such as to put a man on reasonable inquiry that another man is holding himself out to the world and dealing with the property of another as if it was his own, and the owner suffers such a state of things to continue he is estopped as against those who thus dealt in good faith with the apparent owner.

Now in the case mentioned did not the bank actually invest A with all of the apparent *indicia* of ownership of the property he had previously conveyed to the bank? Did not the bank suffer him for seven or eight years to remain in possession of the property conveyed—paying the taxes—calling himself owner. And did not the neighbors of A, almost to a man, in fact every one that was asked the question, declare that he never heard of A's having sold his property, and always considered A as owning all his property until after his, A's death. What matters it that the bank, after A's death may have produced yearly rent notes from A. This was easy enough—what did the public, and especially the creditors of A know, or how could they have known of these secret transactions between A and the bank.

The bank may have paid back to A the taxes he paid on the property—this was easy enough; but it should not have suffered him to enter on the public records that he paid these taxes as owner. Although the bank may have paid back to A this money he paid for taxes, it did not erase from the public records this *indicia* of ownership. "This it ought to have done and not left the other undone."

Another thing, A being the president of the bank, it had special opportunity to know his financial condition.

The whole principle and intent of the law, first declared by Lord Hardwicke in Le Neve v. Le Neve, is that one man shall not hold a secret unrecorded deed to another's land, while such other is left in the possession and apparent ownership of such land; and that when such is the case, creditors—all creditors, simple contract and otherwise—who have given credit to the possessor and apparent owner of such land shall have precedence and be paid their debts from said land, before and prior to the holder of the unrecorded deed. Mr. Pomeroy holds that the foundation of that doctrine is legal fraud, irrespective of the intention of the parties, in the holder of the unrecorded deed who has left his vendor in possession and apparent ownership of the property conveyed.

It would be a monstrous doctrine, subversive of the first principles of right, if a man could take a secret unrecorded deed to land, leaving his vendor in possession and apparent ownership of the land, and then when creditors, who have been misled by this state of things, seek to enforce their claims, for the holder of the deed then for the first time to declare his ownership of the property.

Such a transaction may not be within the recording statute, yet it is within the remedial process of a court of equity—on the doctrine of fraud, as well as of estoppel—of fraud, because the conduct of the holder of the deed is fraudulent in law—of estoppel, because the holder of the unrecorded deed will not be allowed to deny a state of facts which he by his conduct has led the creditors of his vendor to believe to be true, that is the record showing that his vendor still owned the

[5] Phillips v. Costley, 40 Ala. 486; LeNeir v. LeNeir, Amb. 436; Taylor v. Stebbert, 2 Ves. 437; Russell v. Sweezy, 22 Mich. 235.

land, and the vendor being left in possession and apparent ownership of the land, the law presumes conclusively, that the possession of the vendor is in accordance with his deed recorded on the public record, and postpones the unrecorded deed of this vendor to the rights of parties who have been misled by this state of facts.[6]

Statutes cannot always cover all the various instances and applications of a principle, and it frequently happens in the administration of the law that courts are forced to have recourse to the established principles of jurisprudence to widen the scope and give effect to the intent of a statute.

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Columbus, Miss.

[6] Pomeroy Eq. Jur. § 66d; Greaves v. Tofield, L. R. 14 Ch. D. 563; Sawyer v. Adams, 88 Vt. 172.

WILLS—PROVISION FOR TOMBSTONE.

McILVANE v. HOCKADAY.

Court of Civil Appeals of Texas, April 4, 1904. Rehearing denied, June 1904.

Provision in a will for purchase and erection of a monument on testator's grave is a valid disposition of property.

Provision in a will for deposit of money in bank, the interest to be used to keep testator's burial lot in good condition yearly, violates Const. art. 1, § 26, prohibiting perpetuities.

EIDSON, J.: Appellants, as residuary devisees under the last will of Alice M. Seaton, deceased, brought this a *certiorari* proceeding in the district court of Fannin county to have revised and set aside a certain part of an order made in probate in county court of said county in the administration of said decedent's estate, which upheld as valid and ordered the executor to carry out a certain provision in said decedent's last will providing for the erection of a grave-lot monument, coping, and a permanent fund to keep the grave lot in repair, and for the purpose of vacating the provision of the will to which said order related. The provision of the will referred to is as follows: "That the sum of $1,000 be placed in bank for the purchase of a stone for our lot in the Honey Grove Cemetery, in memory of my beloved husband T. H. Seaton and myself, to be purchased by my executor and placed in said lot. The stone I want is of red granite (the color of the Burns' stone; also the color of the monument in the Maysville lot) with a polished bowl of the same stone on top, movable but secured at the corners, costing not over $500. From the remaining $500 a red granite coping around the lot, the remainder of the money to be left in bank, the interest to be used to keep said lot in good condition yearly." Appellee answered by general demurrer, general denial, and special answer, seeking to sustain the testatrix's intentions set forth in said provision of her will.

It appears from the record that the county court held said entire provision valid, and capable of enforcement. The district court upheld all of said provision, except the following part thereof: "The remainder of the money to be left in bank, the interest to be used to keep said lot in good condition yearly." Appellants' contention is that a testator has no power to provide by his last will for the erection of a monument over his grave; that such attempted disposition of one's estate is contrary to our probate laws and to public policy. Appellee has filed cross-assignments of error claiming that said entire provision of the will was valid, and capable of enforcement, and that the district court erred in holding that that part of said provision which provides that the remainder of said sum of $1,000, after the purchase and erection of the monument and coping, should be placed in bank, and the interest used to keep said lot in good condition yearly, was not valid, and capable of enforcement. We are of opinion that the district court did not err in holding all of said provision of said will valid except that part which provides for the remainder of the money after the purchase and erection of the monument and coping to be put in bank, and the interest used to keep said lot in good condition yearly, and in holding that part invalid. We are of opinion that it is legal for a testator to provide in his will for the purchase and erection of a monument to be placed at his grave; that such expense would be a proper and legitimate part of the funeral expenses. In the absence of such a provision in the will, the probate court would be authorized in making provision for the purchase and erection of a suitable monument at the grave of the testator, the amount or cost of which should be regulated by the value of the estate. Bainbridge's Appeal, 97 Pa. 482; Webb's Appeal, 175 Pa. 330, 30 Atl. Rep. 827; Cannon v. Apperson, 14 Lea, 553; Bendall's Distributees v. Bendall's Adm'r, 24 Ala. 295. That part of said provision of said will which provides for a sum of money to be placed in bank and the interest to be used to keep said lot in good condition yearly, is in violation of section 26, art. 1, of the constitution of this state, which provides as follows: "Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be enforced in this state." Said provision of said will creates a perpetuity, and the district court did not err in holding it invalid and incapable of enforcement. 5 Am. & Eng. Ency. Law (2d Ed.), 933; Bates v. Bates, 134 Mass. 110, 45 Am. Rep. 305. This is a universal

rule, except where such trusts are specially legalized by statutory enactment.

We have carefully examined all of the assignments of error, and, finding no reversible error in the record, the judgment of the court below is affirmed. Affirmed.

NOTE.—*Trusts of Indefinite Duration as Violating the Rule Against Perpetuities.*—Except in the case of a trust fund held for distribution to what is commonly known as a "charity" a testator cannot tie up his money indefinitely for any purpose, even though the whole income of the fund is to be spent in a legitimate manner and there is no attempt at accumulation.

Trusts of Indefinite Duration for the Benefit of Persons—Poor Relations.—Thus, a testator cannot create a trust fund for the purpose of paying, for an indefinite time, an income to any general class of persons, as for instance, as any of the testator's relatives or descendants who may hereafter become destitute. Moore v. Moore, 59 N. Car. (6 Jones, Eq.) 132; Smith v. Harrington, 4 Allen (Mass.), 566; Kent v. Dunham, 142 Mass. 216, 56 Am. Rep. 667. In the last case cited a devise in a will of certain property of the testator to two persons named, "their heirs and assigns forever, and to the survivor of them and his heirs forever, in trust, to sell, dispose of, invest and manage the same, and appropriate such part of the principal and interest as they may deem best, for the aid and support of those of my children and their descendants who may be destitute." The attention of the court in this case was called to a line of English cases which hold that a bequest for an indefinite duration, for the benefit of "the poor relation" of the testator is valid on the ground that the objects of the trust are charitable in their nature. These cases are as follows: Attorney-General v. Bucknall, 2 Ark. 328; White v. White, 7 Ves. 423; Attorney-General v. Price, 17 Ves. 371; Isaac v. DeFriez, Ambl. 595; Gillam v. Taylor, L. R. 16 Eq. 581; Attorney-General v. Northumberland, 7 Ch. D. 745, 23 Eng. Rep. 832. The court calls attention to the fact that in the English cases the bequests were to "poor relations" generally, while in the case before the court the devise is for "descendants" of the testator, and uses that distinction to bring the case out from under the operation of the English rule.

Same — Employees.—It often happens that a large hearted employer of labor desires to promote the welfare of the clerks and employees of the business which has made him his fortune, by providing a trust fund, the income of which is to be equally divided among the employees of such institution as long as it shall remain in existence. Unfortunately, it seems to us the courts have declared such a provision void. Siedler v. Syms, 56 N. J. Eq. 275. In this case the following paragraph in a will was declared violative of the rule against perpetuities: "I direct my executors to transfer to (a certain trustee, naming him), eighty shares of stock of the First National Bank, to be held in trust for the following purposes, to-wit: 'To collect and receive during the corporate existence of said bank, the dividends payable thereon, and every year thereafter to divide and distribute such dividends equally among all the clerks and employees of said bank, who shall at the time of such distribution be actually employed therein.'"

Trust of Indefinite Duration for Protection of Property, Generally.—A trust to protect the property interests of testator is void if of indefinite duration. Thus the creation of a trust fund, the income of which was to be used for the purpose of keeping the testator's homestead in repair is void. Bartlett, Petitioner, 163 Mass. 509. So also a devise to trustees to keep testator's house open for the reception of ministers and others of his faith when "traveling in the service of the truth," is void. Kelley v. Nichols, 17 R. I. 306. This case also held that a devise to keep a certain clock in repair was void.

Same—Care of Grave.—The care of his grave is very often a matter of concern to the testator and, if there is to be any exception to the hard and fast rule against perpetuities here would be the place to make the first breach. But the court held such bequests also to be void, refusing even here, to make an exception to the general rule. Kelly v. Nichols, 17 R. I. 306; Johnson v. Halifield, 79 Ala. 423; Fite v. Beasley, 12 Lea. (Tenn.) 328; Sherman v. Baker, 20 R. I. 446; Detwiler v. Hartman, 37 N. J. Eq. 347; Coit v. Comstock, 51 Conn. 352; Bates v. Bates, 134 Mass. 110. In the case of Kelly v. Nichols, *supra*, the court said: "Among all classes there is a pervading sentiment of reverence for the burial places of the dead, which springs naturally from the Christian belief in the resurrection of the body. This sentiment is recognized in this state and elsewhere, by the creation of corporations for maintaining and adorning cemeteries, and by statutes which allow town councils to receive and hold funds in trust for the care of burial lots. However general and commendable this sentiment may be, and however desirable it may be that the graves of the dead be decently and reverently cared for, nevertheless we do not think a bequest of this kind falls within the limits of a charitable use. It is not a gift in aid of any public object, nor for a purpose which affects the public in any way. It benefits no one. Its purpose is purely private and personal. It seeks to create a perpetuity simply to insure the care of testator's own burial lot. It is now well settled that such bequests are void."

JETSAM AND FLOTSAM.

JOHN D. LAWSON ELECTED PRESIDENT OF MISSOURI BAR ASSOCIATION.

At the annual meeting of the Missouri Bar Association held at St. Louis on September 26 and 27, Professor John D. Lawson, Dean of the Law Department of the University of Missouri, was elected president for the ensuing year.

Our readers are reminded that Professor Lawson was editor of this JOURNAL for seven years.

OVERHANGING TREES.

Among the smaller worries of life may be counted the annoyance sometimes caused by the overhanging branches of our neighbors' trees. They may darken our dining room, prevent the sun reaching one's greenhouse, or otherwise interfere with the enjoyment of our property. Our neighbor does not always quite appreciate our grievance and refuses to have his tree cut down or its branches lopped off. What, then, is to be done? This is a question which we have not unfrequently been asked to answer in these columns, and considering how often the annoyance must have been caused, it is astonishing that until June of this year it had never previously been decided in the high court that an action will lie for the damage caused by such overhanging branches. It has now been so decided in Smith v. Giddy (1904), 2 K. B. 448.

Our ancestors were more accustomed than we are to take the law into their own hands. When branches overhung and caused annoyance, the owner or occupier of the land encroached upon lopped them off. It was decided some centuries ago that he was entitled to do so. It was so laid down by Croke, J., in Morris v. Baker, 1 Roll. R. 394, and in Penruddock's Case, 5 Rep. 1006. The right to remove the offending branches has never been seriously questioned, and was confirmed by the decision of the house of lords in Lemmon v. Webb (1895), A. C. 1. In that case, as in most all others, some other point was relied on by the owner of the trees, as, for example, that the land overhung was not the property of the person who lopped off the branches.

In Lemmon v. Webb, *supra*, the owner of the trees brought an action for damages caused by the defendant cutting the branches overhanging his land. He, however, based his case on two grounds, one, that the defendant ought not to have cut off the branches without first giving the owner notice, and the other that as the trees had overhung the defendant's land for over twenty-five years he (the plaintiff) had gained a prescriptive right in respect of them. The house of lords decided against both contentions. Lord Macnaghten summed up the matter very briefly. He said: "I think it is clear that a man is not bound to permit a neighbor's tree to overhang the surface of his land, however long the space above may have been interfered with by the growth of the tree. Nor can it, I think, be doubted that if he can get rid of the interference or encroachment without committing a trespass or entering upon the land of his neighbor he may do so whenever he pleases, and that no notice or previous communication is required by law. That, I think, is the good sense of the matter, and there is certainly no authority or *dictum* to the contrary."

As regards the question of prescription, it was not treated very seriously by the house. A tree at the beginning and end of twenty years is quite different, and occupies a different space. To remove the growth during that period would probably kill the tree, and the suggestion that the owner should only cut the recent growth would lead to an absurd conclusion. The argument really turned on the question of notice, and was decided mainly on the ground that in no previous case had it ever been held that any notice was necessary. It would be different if the person who wished the branches lopped off had to go on to his neighbor's land to do it. In that case he would commit a trespass, and he must at least, give his neighbor notice before he enters on his land to abate a nuisance.

Although the right to lop off the overhanging branches is thus absolutely clear, it seems rather extraordinary that the law should not only have allowed the person aggrieved to abate the nuisance himself, but should not have provided him with any other remedy. It being clear that there is a right in an owner to have his lands clear of the branches of his neighbor's trees, one would have expected that he could have obtained an injunction, mandatory or otherwise, to restrain the trespass and also damages for any injury caused, and that the law, in order to prevent the possibility of a breach of the peace, would have discouraged him from remedying the evil himself. Notwithstanding the fact that such is the usual policy of the law, there was not, until the above case of Smith v. Giddy, *supra*, any authoritative decision to be found in the reports that an action for damages would lie for loss or injury caused by overhanging trees.

In that case the plaintiff alleged that he had sustained damage to the extent of 60*l.* by reason of certain elm and ash trees growing on the defendant's premises overhanging those of the plaintiff, and interfering with the growth of his fruit trees. He claimed damages and an injunction. The case was tried in a county court, and the county court judge nonsuited the plaintiff on the ground that the plaintiff's only remedy was to abate the nuisance by cutting the overhanging branches himself. The divisional court reversed this on appeal and sent the case back for trial. The only cases cited in support were Crowhurst v. Amersham Burial Board, 4 Ex. D. 5, and Lemmon v. Webb, *supra*. A *dictum* of Kay L. J., in his judgment in the latter case when in Court of Appeal (1894), 3 Ch. 1, was mainly relied upon by the plaintiff. It was to the effect that to allow trees to overhang the boundary is a nuisance, and "for any damage occasioned by this an action on the case would lie."

In Crowhurst v. Amersham Burial Board, *supra*, the facts were somewhat different. A yew tree which grew in the defendant's ground had spread so as to grow through beyond the boundary railings so as to project over an adjoining meadow, which was hired by the plaintiff for pasture. The plaintiff's horse, while in the meadow, ate of that portion of the yew tree which so projected and in consequence died. It was held that the plaintiff could recover the value of his horse. The decision was based mainly upon the principle laid down in the well-known case of Rylands v. Fletcher, L. R. 3 H. L. 330, that a person who, for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at its peril. If he does not do so he is answerable for all the damage which is the natural consequence of its escape.

In Smith v. Giddy, *supra*, Wills and Kennedy, J.J., were of opinion that the above principle was applicable to the overhanging branches of trees which caused injury to fruit trees. Kennedy, J., seems to have thought that there was a distinction between the case where the trees were doing damage and where they were not. He said: "If trees, although projecting over the boundary are not, in fact, doing any damage, it may be that the plaintiff's only right is to cut back the overhanging portions, but where they are actually doing damage, I think there must be a right of action." It hardly seems to us necessary to invoke the principle of Rylands v. Fletcher, *supra*. In that case the owner brought on his land something dangerous and unusual, and it was held that he was liable for any damage that might be caused by its escape, although he had been in no way negligent. A tree is not an unusual thing on land, and neither can it be said to be dangerous unless it be of a poisonous nature like a yew tree. We should have thought that the common law of trespass was quite sufficient to meet such a case. If a man standing on his land pushes his stick through the boundary on to the land of another, he commits a trespass, and an action will lie for nominal or substantial damages according as damage is occasioned or not. If a man's tree, standing on his land, sends its branches on to the land of his neighbor, it seems a like trespass, and an action should lie. The lopping off the branches which offend can have nothing to do with the legal right: it is merely the remedy. The right is to have the free use of the land above and below the surface. *Cujus est solum ejus est usque ad coelum et ad inferos.*—*Justice of the Peace.*

THE ETHICAL OBLIGATIONS OF THE LAWYER AS A LAWMAKER.

Justice David J. Brewer's address before the Albany Law School on June 1 is in all respects worthy of very careful consideration. *Inter alia*, he observed:

"So far from there being any incompatibility between personal integrity and the practice of the law, success in the practice requires the highest integrity and unfailing honesty. I do not, of course, mean that there are no dishonest lawyers. There are bad men in all professions, as there are black sheep in every flock. Doubtless some personally dishonest, by their intellectual skill, brilliancy in the court room, or knowledge of the law, achieve notoriety at least, and not infrequently wealth, as wealth is known to the profession. But, notwithstanding this concession, I insist that personal integrity is as essential to a lawyer's success as to success in any other business or profession; that a lack of integrity is a bar to the highest place, and that a good character is as important a qualification of a lawyer as of a minister. The work he does, the position he fills and the responsibilities he assumes all demand personal integrity.

When we speak of professional ethics we are apt to think of the lawyer in his office or in the courtroom, as though there was his only work of a strictly professional character, but this is a mistake. The lawyer, as a lawyer, has a distinctive work in lawmaking. The obligations of professional ethics go with him into the legislative halls. To that work and those obligations I desire this evening to call your attention.

The conditions of life in this republic have wonderfully changed during the last century. Formerly there were two parties, the individual and the government. Now there are three, the individual, the corporation and the government. Between the individual and the government has come the corporation, which collects individual means, organizes individual activities and assumes by collective action to accomplish more than the individuals included within it by separate action can hope to achieve.

If we now turn to the processes by which laws finally reach their place on the statute books (and for convenience I shall draw my illustration from the congress of the United States), we notice two parties at work, the petitioner and the legislator; or, as it perhaps might equally well be stated, the lobby and the committee. The first thing that impresses one watching the proceedings of congress is the multitude and magnitude of the interests pressing for or opposing legislation. Washington is the great lobby camp of the world, using that term in no offensive sense. I do not mean that the greatest corruption of legislators is there, but that there are more interests, and agents of those interests, seeking recognition and legislation from the great legislative body of the nation.

Now, the counsel and advocate of these interests is the lawyer. As counsel for a corporation the lawyer is under the same ethical obligations as the counsel of an individual. As an advocate before departments or legislative bodies or their committees he stands upon the same plane as the lawyer in the courtroom. Truthfulness, integrity, candor, are as essential in the one place as the other. In that work he bears the same relations to lawmaking that the lawyer in the courtroom does to the judgments of the court.

But the great work of the lawyer in the matter of lawmaking is as a legislator. It is well known that legislatures are largely composed of lawyers. The lawyer is the one whose studies fit him to understand more clearly than others the scope and limits of constitutional power. He is more familiar with the statutes already in force and with the judicially established significance of their phraseology. He is better qualified than any one else to frame new legislation that will, while carrying out the wishes and purposes of to-day, dovetail into that which has already been enacted; or, if it changes that which is already in force, will do so in the most satisfactory and least disastrous manner. It is a popular instinct which recognizes this fact, and it is by reason of that and not because of assurance or loquacity that the lawyers now as of old constitute the great majority in legislative bodies.

As a lawmaker the lawyer should ever bear in mind that he is counsel for the nation. True, he is placed in his position, made a legislator, by one of the national parties. In an honorable sense he is a party man, and believes that the principles of that party carried into the active life of the government will secure the best results for the people at large. On party questions he may be expected to be loyal to his party and vote with it. Yet, even in party matters he ought not to be the mere servile tool of party. One is elected as the representative of a party because he is believed to have convictions along the lines of that party's thought, and it is disloyalty for him to repudiate its principles. It is one thing, however, to change party affiliations and support in the legislative body the party which antagonized him in the election. It is another and very different thing when one maintaining his allegiance to a party insists on the right of independent advice, counsel and action on the various questions presented. Well has it been said, 'he serves his party best who serves his country best,' and a legislative body is far nobler and a greater blessing to the community when it becomes counsel and ceases to be a mere counting house."

Justice Brewer then discussed the sources of a lawmaking lawyer's temptation, the greatest of which, he said, "comes from the marvelous development of corporate interests." He continued:

"These interests are colossal in size, alluring by the magnitude of their achievements, tempting not merely by the money they possess and with which they can reward, but more by the influence they can exert in favor of the individual lawmaker in the furtherance of his personal advancement.

Senators and representatives have owed their places to corporate influence, and that influence has been exerted under an expectation if not an understanding, that as lawmakers the corporate interests shall be subserved.

I am not here to deny the value of corporations. I realize the magnitude of the work that is possible through such combinations, and I do not deny their right to be heard before any legislative body in defense of their rights or in furtherance of their interests. But the danger lies in the fact that they are so powerful and that the pressure of so much power upon the individual lawmaker tempts him to forget the nation and remember the corporation. And the danger is greater because it is insidious. There may be no written agreement. There may be, in fact, no agreement at all, and yet when the lawmaker understands that that power exists which may make for his advancement or otherwise, that it will be exerted according to the pliancy with which he yields to its solicitations, it lifts the corporation into a position of constant danger and menace to republican institutions. I do not mean to insinuate that all legislators

are influenced thereby. On the contrary, I know there are many who stand in the full integrity of their being, acting always in accordance with their judgment of the best interests of the nation; but within the limits of our profession, as elsewhere in the world, are many weak characters who, while they might not deliberately do a dishonest thing or deliberately prove false to an oath or obligation, yet yield to the pressure of corporate interests, deluding themselves with the idea that those interests are synonymous with the interests of the nation."—*American Lawyer.*

THE RIGHT OF SEARCH.

The interference with neutral commerce, which is now occurring as an incident of the war between Russia and Japan, revives the consideration of questions of maritime law of which very little has been heard of recent years. But in the eighteenth century, when this country was engaged almost continuously in war, and was establishing her maritime supremacy, the right of search and the extent to which goods found in neutral ships could be seized, were very burning questions. As might be expected, it was Great Britain which then sought to place a wide construction upon belligerent rights, while Russia was foremost on the opposite side. The actual right of search by a belligerent public ship of war seems, indeed, to have been universally accepted. We quoted recently (*ante*, p. 634) the judgment of Lord Stowell on this point in in The Maria (1 C. Rob., p. 360), where he described the right of visiting and searching merchant ships upon the high seas "as an incontestable right of the lawfully commissioned cruisers of a belligerent nation," and he added: "All writers upon the law of nations unanimously acknowledge it, without the exception even of Hubner himself, the great champion of neutral privileges. In short, no man in the least degree conversant in subjects of this kind has ever, that I know of, breathed a doubt upon it." Equally emphatic are the opinions of American jurists. Marshall, C. J., in the case of The Anna Maria, said that "the right to visit and detain for search is a belligerent right which cannot be drawn in question," and Chancellor Kent spoke of the belligerent right of visitation and search as "incontrovertible" (Halleck's International Law, 3d. Ed., p. 256).

In the eighteenth century Great Britain's exercise of the right of search was associated with her claim to confiscate enemy's goods found in neutral ships. By international law as then understood, and it would seem by international law now save where altered by treaty, this claim was clearly right. At one time, indeed, the French and Spanish doctrine went further, and the confiscation was extended to the neutral vessel herself as well as to the enemy's goods found in her. But although this extension was abandoned, belligerent powers insisted on the right of seizing enemy's goods, while neutral powers sought to annul it. "The importance," says Lecky (England in the Eighteenth Century, Vol. 4, p. 157), "to any great naval power of stopping the commerce of its enemy, and preventing the influx of indispensable stores into its ports, was so manifest that it is not surprising that it should have been insisted on; and it is equally natural that neutral powers which had little or no prospect of obtaining any naval ascendancy should have disliked it, and should have greatly coveted the opportunity which a war might give them of carrying on in their own ships the trade of a belligerent." Hence when England was at war with Spain in 1780 Russia placed herself at the head of the armed neutrality for the purpose of asserting the maxim "free ships, free goods." The members of the league, however, only maintained this principle so long as they were interested in it as neutrals. On becoming belligerents they abandoned it, and it was not actually established until it was incorporated in the declaration of Paris in 1856 under the rule: "The neutral flag covers enemy's goods with the exception of contraband of war." It is this exception, of course, that gives importance to the right of search at the present time.

At the period to which we have already referred neutral nations attempted to exempt their merchant vessels from the annoyance of search by placing them under the protection of a man-of-war, but the efficacy of this "right of convoy," as it was called, was denied by Great Britain, and it was the point at issue in the case of The Maria, *supra*. In January, 1798, when this country was at war with France, a British squadron met in the Channel a Swedish frigate having a number of Swedish merchantmen under her convoy. Both the frigate and the merchantmen had instructions from their government to resist search and, on the Swedish officer in command refusing to allow search, the British squadron captured most of the Swedish vessels, and they were brought in for adjudication. The Maria was one of them, and hence Lord Stowell had to consider whether the interposition of the Swedish man of war justified the refusal of the right of search. He held that it did not, and after laying down as a first principle the proposition already referred to, that the right of search is incontestable, he enunciated as the second principle "that the authority of the sovereign of the neutral country being interposed in any manner of mere force cannot legally vary the rights of a lawfully commissioned belligerent cruiser." Hence The Maria by illegally resisting search had become liable to confiscation, and by the judgment of Lord Stowell she was condemned. As a result of this denial of the right of convoy, the second armed neutrality was formed by the Northern powers in 1800, one of its principles being that the declaration of the officer commanding a ship in charge of a convoy of merchantmen, that the latter had no contraband on board, is final and excludes search. Since that date Great Britain has always refused to abandon the practice of searching ships under convoy, but numerous treaties have been made between other countries providing that the declaration of a convoying officer exempts the vessels under convoy from search (see Risley's Law of War, p. 277).

It is abundantly clear that this country cannot object to the right of search in principle, and every neutral merchantman must submit to the exercise of this right. She is bound to stop at the signal of a belligerent public ship of war, the usual signal being the firing of a gun, known as the *semonce* or affirming gun. Formerly privateers could search, but privateering is now, as regards most countries, including Russia, abolished. And if she does not submit to search she puts herself in the wrong and is liable, as was held in The Maria, *supra*, to confiscation. But the right while it must be admitted, is of course to be exercised in a regular manner. "The right is limited to such acts as are necessary to a thorough examination into the real character of the vessel, the cargo and voyage, and all acts that transcend the limits of this necessity are unlawful" (Halleck, vol. 2, p. 258). Moreover, when the search shows that the cargo or some part of it is of a suspicious character, the captor is not himself

entitled to adjudicate on the matter. He must bring the ship to the nearest convenient port of his own country to be adjudicated upon by a prize court, and if he destroys her he is liable for the damage done. This was laid down distinctly in The Felicity (2 Dods. Ad., p. 384). "If a neutral ship," said Lord Stowell, "is destroyed by a captor, either wantonly or under an alleged necessity, in which she herself was not directly involved, the captor or his government is answerable for the spoliation." And subsequently, at p. 386: "The act of destruction cannot be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own state; to the neutral it can only be justified under any such circumstances by a full restitution in value." This judgment appears to cover the case of the alleged destruction of the Knight Commander, and the development of affairs in connection with that incident will be watched with interest. It is unnecessary, however, to regard any of these matters as involving serious danger to our relations with Russia. They have constantly occurred in previous wars, and they can be adequately dealt with by the regular courts and the usual diplomatic channels. No real questions of difference between the two countries are, so far as can be at present foreseen, likely to arise.—*Solicitor's Journal.*

BOOK REVIEWS.

NEW YORK CONSTABLE'S GUIDE.

The courtesy of the publisher has placed in our hands a copy of a little volume entitled "Constables' Guide," by Melvin T. Bender and Harold J. Hinman of the Albany (N. Y.) bar. The book contains a full exposition of the rights, privileges, duties and liabilities of constables in New York, giving the statutes, both civil and criminal, of that state, together with copious annotations, decisions, explanatory notes, forms, and a digest of their fees. The book is tastefully and conveniently arranged and will undoubtedly command the patronage and wonderfully assist the class of officers for whom it is intended.

Printed in one 12 mo. volume of 113 pages and published by Matthew Bender, Albany, N. Y.

HOCHHEIMER'S CRIMINAL LAW.

No more welcome text book of the law could come to the desk of the editor of this journal than that which we have the pleasure to review at this time, i. e., the second edition of the work by Mr. Lewis Hochheimer, entitled "The Law of Crimes and Criminal Procedure." Our gratification at the appearance of this volume lies in the fact that we see in it the first and only complete epitome of criminal law in such a small compass. It is accurate, comprehensive and practical. It will help an attorney to decide a doubtful point of law on a moment's notice and carries him at once back to the authoritative precedents. We know of no text book on the subject of criminal law which is at once so practical and so conveniently arranged.

Printed in one volume of 566 pages and published by the Baltimore Book Company, Baltimore, Md.

BOOKS RECEIVED.

The Monroe Doctrine. By T. B. Edgington, A. M., of the Bar of Memphis, Tenn. Boston, Little, Brown & Company, 1904. Cloth pp. 360. Price $3.00. Review will follow.

A Letter to the Sheriffs of Bristol. Edmund Burke. Edited with an introduction and notes, by James Hugh Moffatt, Assistant Professor of English Literature, Central High School, Philadelphia. Hinds, Noble & Eldridge, Philadelphia and New York. Price 75 cents.

HUMOR OF THE LAW.

O'Connell used to tell the story of the court officer, who, wishing to thin the court, called out: "All ye blackguards that isn't lawyers, quit the court."

During a breach of promise case heard in Indiana lately, the counsel on both sides chattered considerably about the "fire of love," Cupid's "flames," "the burning passion," etc. The jury brought in a verdict that both plaintiff and defendant were guilty of arson and recommended them both to the mercy of the court.

A king's counsel, cross-examining a witness, said: "You compel me to test your credibility. This is not the first time we have met." The witness did not seem to remember. "Surely it must have occurred to you during this trial that we are not unknown to one another," continued the cross-examiner. Then Mr. Justice Darling, in his artless manner, takes up the running thus: "Do you want the jury to believe, Mr.——, that the witness is discredited because he knows you?"

Elihu Root is keenly missed in the official family of President Roosevelt, where his wit had proved itself a constant and ever-trustworthy quantity.

"One of the best instances of his readiness in repartee," says Secretary Hitchcock, "was told to me by Root's private secretary. It happened when a delegation of Creek Indians had come east to see me on some matters of importance to them; but being misdirected they got by mistake into the war department. Of course their interpreter merely asked for the secretary and the red men were ushered into Mr. Root's office.

What was said and done for the first few minutes must have been funny, for the conversation was all at cross-purposes; but at last something was dropped which showed what the visitors wanted, when quick as a flash Root said:

'Oh, I see! Gentlemen, you have come to the wrong man. I have jurisdiction over navigable rivers, but not over creeks,' and he bowed them out."

They tell a good story at the expense of W. B. Rodgers, the only lawyer at the Allegheny County (Pa.) Bar, or in the United States, for that matter, who holds the distinction of having been city attorney of the three cities of one county at various times. He was counsel some time ago for a man charged with a serious offense, and on the day of the trial the defendant was in a condition that would certainly not have improved his chances of acquittal. Attorney Rodgers was worried, but he is a general in addition to being a political diplomat. He locked his client in a room in a downtown hotel and then studied out the knotty problem before him.

One of the most prominent oil operators of Pittsburg, and one of his most intimate friends, happened into his office shortly before he was ready to try the case. It was only a social call for a quiet chat, and Mr. Rodgers requested that his friend go into the courtroom with him. The oil operator sat beside Mr. Rodgers at the counsel table, and, during the progress of the case, he took little note of what was going on. He was not interested. Several times witnesses pointed in his direction, as did Mr. Rodgers, but the oil operator thought nothing of it. Mr. Rodgers tried to be indifferent. None of the witnesses appeared to know the operator, at least they said that they did not, and the prosecutor also stated that he did not know the man seated beside Mr. Rodgers. The jury naturally thought the man was Mr. Rodger's client, and when the right bower of Bigelow, at the conclusion of the testimony, got up and said, "That is my case. This is not the man," not many minutes were wasted in bringing in a verdict of acquittal.

The oil operator accompanied Mr. Rodgers out of court, and it was not until they were a safe distance away from the seat of justice that Mr. Rodgers confided to his friend that he had posed as the defendant in the case. The operator was mad all through when he first heard of it, but the ridiculousness of the situation appealed to him and he took it as a huge joke and as a sample of the diplomacy of one who could pull a grand out of the burning. It is doubtful whether the brilliant city attorney would acknowledge the story, but his friends say it is true.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL — Action Against Personal Representatives.—Where, if a person were living, an action in equity could be maintained against him for an accounting, a judicial remedy survives against his personal representatives.—Harrigan v. Gilchrist, Wis., 99 N. W. Rep. 909.

2. ACKNOWLEDGMENT—Deeds, Unmarried Men.—Battle's Revisal, ch. 35, § 14, providing for proof or acknowledgment of deed of married persons before probate judges, held to have no application to deeds of unmarried men.—Westfeldt v. Adams, N. Car., 47 S. E. Rep. 816.

3. ACTION—Joinder of Case and Trespass.—A count in trespass cannot be joined in an action brought in case.—Smith v. Rhode Island Co., R. I., 57 Atl. Rep. 1056.

4. ADMIRALTY—Maritime Contract—An agreement by the master of a steamboat to transport cotton seed from one port to another held a maritime contract, the breach of which entitles the shipper to recover damages in admiralty.—Florence Cotton Oil Co. v. Alabama Towboat Co., U. S. C. C. of App., Fifth Circuit, 128 Fed. Rep. 915.

5. ADMIRALTY—Set-Off.—A set-off is not cognizable in admiralty, except so far as it relates to the particular transaction which is the subject of the action, and goes to reduce or overcome the libelant's demand.—Hastorf v. Degnon-McLean Contracting Co., U. S. D. C., S. D. N. Y., 128 Fed. Rep. 982.

6. ADVERSE POSSESSION—Conveyance.—Negotiations for the purchase of a strip of land claimed by plaintiff by adverse possession held not a relinquishment of his adverse rights to the land.—Clithero v. Fenner, Wis., 99 N. W. Rep. 1027.

7. ALIENS—Arrest for Deportation.—A Chinese person, arrested in this country for deportation under the exclusion acts, may be admitted to bail by a district court or judge, pending his hearing before the commissioner.—*In re* Lum Poy, U. S. C. C., D. Mont., 128 Fed. Rep. 974.

8. ALIENS — Citizenship of Child Born of Chinese Parents.—A child born in the United States of Chinese parents permanently domiciled therein held a United States citizen.—Sing Tuck v. United States, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 592.

9. ALIENS—Naturalization.—Under Const. art. 1, § 8, congress may empower state courts to admit qualified aliens to citizenship, and such courts may exercise the power without legislative authority from the states, which created them.—Levin v. United States, U. S. C. C. of App., Second Circuit, 128 Fed. Rep 826.

10. APPEAL AND ERROR — Amount in Controversy.—Where a judgment creditor seeks to revoke a transfer of real estate, and prays that the property be sold to pay his claim, the test of appellate jurisdiction is the pecuniary amount of the judgment, and not the value of the land conveyed.—Courtney v. Rigmaiden, Ia., 86 So. Rep 704.

11. APPEAL AND ERROR—Consideration of Evidence.—On appeal from an involuntary nonsuit, plaintiff is en-

titled to the most favorable view of the evidence which the jury might have taken.—Dorff v. Brooklyn Heights R. Co., 88 N. Y. Supp. 463.

12. APPEAL AND ERROR—Failure to Comply With Præcipe.—Where the præcipe filed by appellant directs the clerk to certify a transcript of the bill of exceptions, and he certifies the original bill, it cannot be considered.—Boos v. Lang, Ind., 71 N. E. Rep. 120.

13. APPEAL AND ERROR — Remanding on Account of Defect of Parties.—Though no objection is made, the supreme court on appeal will, where there is a defect of parties, remand the case that they may be brought in by amendment.—Wasserman v. Metzger, Va , 47 S. E. Rep. 820.

14. APPEAL AND ERROR — Supreme Court Rule.—Supreme court on a second appeal held not precluded under the doctrine of law of the case from passing a question not determined on the first appeal.—Vann v. Edwards, N Car., 47 S. E. Rep. 784.

15. APPEAL AND ERROR—Time for Taking.—Under the statutes the right to appeal from an order denying new trial may be exercised after the time for appeal from the judgment has expired.—King v. Hanson, N. Dak., 99 N. W. Rep. 1085.

16. ASSIGNMENT FOR BENEFIT OF CREDITORS—Secured Creditor.—A secured creditor of an assignor for benefit of creditors held not entitled to receive dividends upon the face of his claim without crediting the value of the collaterals.—Union & Planters' Bank v. Duncan, Miss., 36 So. Rep. 690.

17. ATTORNEY AND CLIENT—Authority to Employ Attorney for Bondholders.—An attorney and agent for bondholders held authorized to employ plaintiffs to prosecute an appeal from an order appointing a receiver in proceedings to foreclose a mortgage securing the bonds.—Fowler v. Iowa Land Co., S. Dak., 99 N. W. Rep. 1095.

18. ATTORNEY AND CLIENT—Lien for Services.—An attorney held to have lost his lien on securities of an insolvent, and not entitled to the setting aside of the order discharging the insolvent's receiver. — Winans v Grable, S. Dak., 99 N. W. Rep. 1110.

19. BANKRUPTCY—Attorney's Fees.—An attorney held not entitled to file exceptions to the ruling of a referee disallowing certain fees paid to him by the bankrupt's assignee for services performed before the bankruptcy proceedings were instituted.—*In re* Byerly, U. S. D. C., M. D. Pa., 128 Fed. Rep. 637.

20. BANKRUPTCY—Authentication of Proof of Claims. —A notary public of any state or territory is authorized to administer the oath to a proof of claim, and such oath is sufficiently authenticated *prima facie* by what purport to be his official signature and seal.—*In re* Pancoast, U. S. D. C., E. D. Pa., 129 Fed. Rep. 648.

21. BANKRUPTCY—Concealment of Assets. — Where a bankrupt, before the filing of his petition, claimed to have paid a large sum to distant creditors, but succeeded in producing only one to corrobate his testimony, an order directing that he pay the trustee the amount alleged to have been paid to the others held proper. — *In re* Leinweber, U. S. D. C., D. Conn., 128 Fed. Rep. 641.

22. BANKRUPTCY—Consolidation Petitions.—An order of the court consolidating two bankruptcy petitions before reference of the case held *res judicata* as to the necessity of the filing of the second petition.—*In re* McCracken & McLeod, U. S. D. C., W. D. Tenn., 129 Fed. Rep. 621.

23. BANKRUPTCY—Corporations Engaged in Farming. —Bankrupt act exempting a person engaged chiefly in farming or the tillage of the soil from liability to be adjudged a bankrupt, held not to apply to a corporation. —*In re* Lake Jackson Sugar Co., U. S. D. C., E. D. Tex., 129 Fed. Rep. 640.

24. BANKRUPTCY—Delivery of Property to Bankrupt Under Bond.—Where the receiver of a bankrupt firm took possession of property claimed by one of the members thereof, he would be ordered to deliver the same to the trustee or to the claimant, on his giving bond for its return pending determination of his right thereto.—*In re* N. Shaffer & Son, U. S. D. C., M. D. Pa., 128 Fed. Rep. 986.

25. BANKRUPTCY—Destruction of Vouchers.—A specification of objection to a bankrupt's discharge, on the ground that vouchers had been destroyed with intent to conceal the bankrupt's financial condition, held sufficiently specific.—E. H. Godshalk Co. v. Sterling, U. S. C. C. of App., Third Circuit, 129 Fed. Rep. 530.

26. BANKRUPTCY—Estoppel.—Plaintiff held not estopped to prosecute action for tort by filing notes for the price of the goods obtained in bankruptcy proceedings. —Standard Sewing Mach. Co. v. Alexander, S. Car. 47 S. E. Rep. 711.

27. BANKRUPTCY—Exemptions. —A bankrupt held entitled to have certain of his property, claimed to be exempt, set aside and held by the receiver until his claim thereto could be determined.—*In re* Joyce, U. S. D. C., M. D. Pa., 128 Fed. Rep. 985.

28. BANKRUPTCY—Extinguishment of Lien.—A chattel mortgagee of a bankrupt, who, prior to the bankruptcy, accepted part of the property in full satisfaction of the debt, cannot thereafter transfer his lien on the remainder to another.—*In re* Thompson, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 575.

29. BANKRUPTCY —Homestead Exemption.—A bankrupt's trustee held entitled to redeem land occupied by the bankrupt under a contract to purchase and apply such portion thereof as was not subject to homestead exemption to the debts.—Duffield v. Dosh, Iowa, 99 N. W. Rep. 1074.

30. BANKRUPTCY—Jurisdiction to Order Sale of Assets. —A court of bankruptcy has jurisdiction to order a sale of all the assets of a bankrupt manufacturing company free from incumbrance.—*In re* Shoe & Leather Reporter, U. S. C. C. of App., First Circuit, 129 Fed. Rep. 588.

31. BANKRUPTCY—Partnership or Individual Debt.— The entry on the books of a firm of an indebtedness contracted by one partner individually, without the creditor's knowledge, or the making of payments thereon by firm checks cannot convert it into a partnership debt, so to preclude the creditor from proving it against the estate of the partner in bankruptcy.—Hibberd v McGill, U. S. C. C. of App , Third Circuit, 129 Fed. Rep. 590.

32. BANKRUPTCY— Preferences. — Failure of a bankrupt to take steps to regain possession of goods removed from the bankrupt's store by a creditor without the bankrupt's permission, in the absence of collusion, held not to constitute an act of bankruptcy.—*In re* Belknap, U. S. D. C., E. D. Pa., 129 Fed. Rep. 646.

33. BANKRUPTCY—Provable Claims.—A claim of an administrator d. b. n. against the surety on the bond of his predecessor held a fixed liability absolutely owing to the estate, as evidenced by a decree of the orphans' court in Pennsylvania, which was provable against the estate of the surety in bankruptcy.—Hibberd v. Bailey, U. S. C C. of App., Third Circuit, 129 Fed. Rep. 575.

34. BANKRUPTCY—Receiver's Right to Sue. The receiver of a bankrupt, directed to forthwith collect and take possession of the bankrupt's assets, held not authorized to sue to recover the same in court other than that by which he was appointed.—*In re* National Mercantile Agency, U. S. D. C., E. D. Pa., 128 Fed. Rep. 639.

35. BANKRUPTCY — Sale of Property for Taxes. — A purchaser of a bankrupt's real estate at a foreclosure sale, with knowledge that it was subject to a lien for taxes, has no equity to require the payment of the taxes from the personal estate of the bankrupt.—*In re* Brinker, U. S. D. C., W. D. N. Y., 128 Fed. Rep. 634.

36. BANKRUPTCY— Selection of Trustees.—A trustee, elected by a majority of the creditors of a bankrupt corporation, who had been a stockholder, and who had been previously closely identified with the corporation's

management, should not be permitted to serve as against the objections of a dissenting minority. — *In re* Gordon Supply & Mfg. Co., U. S. D. C., M. D. Pa., 129 Fed. Rep. 622.

37. BANKRUPTCY — Setting Aside Composition. — A creditor is not required to return or offer to return the amount received on a composition as a condition precedent to the filing of a petition to set the same aside for fraud.—*In re* Roukous, U. S. D. C., D. R. I., 128 Fed. Rep. 645.

38. BANKRUPTCY—Substitution of Defendant's Trustees.—An order of the federal court held necessary for substitution, as complainant in a creditors' bill, of the trustee in bankruptcy of the judgment debtor.—Kinmouth v. Braeutigam, N. J., 57 Atl. Rep. 1013.

39. BANKRUPTCY—Submitting Issues to Jury.—A district judge sitting in bankruptcy has discretion to refer the issues joined on a petition in involuntary bankruptcy to a jury, although a jury trial has been waived by the defendant, and may also in his discretion certify the cause to the circuit court for that purpose, and there submit such issues as he desires to a jury, taking their verdict as advisory.—Oil Well Supply Co. v Hall, U. S. C. C. of App., Fourth Circuit, 128 Fed. Rep. 875.

40. BANKRUPTCY—Suffering Preference Through Legal Proceedings —An insolvent debtor, who fails to pay a lawful debt when due, and allows the creditor to obtain a judgment thereon and levy on his goods, "suffers and permits" a preference to be obtained through legal proceedings, which constitutes an act of bankruptcy, unless the preference is discharged at least five days before the time fixed for sale under the levy.—Bogen & Trummel v. Protter, U. S. C. C. of App., Sixth Circuit, 128 Fed. Rep. 533.

41. BANKRUPTCY — Suit of Bankrupt's Wife Against Trustee.—A bankrupt is not an indispensable party to a suit by his wife against his trustee in bankruptcy to enforce a resulting trust of real estate scheduled as a part of the bankrupt's assets.—Buckingham v. Estes, U. S. C. C. of App., Sixth Circuit, 128 Fed. Rep 584.

42. BANKRUPTCY — Withholding Discharge.—A bankrupt's discharge should be withheld to enable a judgment creditor to enforce her rights in the state court, where she claimed that as against her judgment the debtor was not entitled to exemptions.—*In re* Brumbaugh, U. S. D. C , D. Pa., 128 Fed. Rep. 971.

43. BANKS AND BANKING—Overdrafts.—Where a note payable on demand is given for an overdraft, the bank is entitled to sue thereon in the same manner as it could have sued for the overdraft.—Hennessy Bros. & Evans Co. v Memphis Nat. Bank, U. S. C. C. of App., Sixth Circuit, 129 Fed. Rep. 557.

44. BANKS AND BANKING — Stockholders' Liability.—While there is no necessity for joining creditors of a bank as parties plaintiff in a suit brought by the receiver to enforce the stockholders' double liability imposed by Pub. Laws 1897, p. 473, ch 298, such joinder is not prejudicial to defendants.—Smathers v. Western Carolina Bank, N. Car., 47 S. E. Rep. 893.

45. BENEFIT SOCIETIES — Amending By-Laws. — A member of a beneficial society cannot be deprived of the benefits of his contract by an amendment of the by-laws made without his consent. — Zinna v. Saveria Friscia Soc , 88 N. Y. Supp. 404.

46. BENEFIT SOCIETIES — Beneficiaries.—A statement in a mutual benefit certificate that the beneficiary is the wife of the member is descriptive of her relation to him, and does not provide for payment to his widow only.—White v. Brotherhood of American Yeomen, Iowa, 99 N. W. Rep. 1071.

47. BENEFIT SOCIETIES—Rights of Members on Pension Roll.—Member of police relief association on pension roll held entitled to pay dues and receive sick benefits as an active member of the force.—Nickerson v. Providence Police Assn., R. I., 57 Atl. Rep. 1057.

48. BUILDING AND LOAN ASSOCIATIONS—Withdrawing Shareholders. — Shareholder in a building association held not entitled, in an action by the receiver on his note, to offset the withdrawal value of his shares.—Gaskill v. Polhemus, N. J., 57 Atl. Rep. 1048.

49. CARRIERS—Attempting to Pass From One Car to Another.—Where a passenger voluntarily attempted to pass from one car to another while the train was running at a high rate of speed, and fell from the train, he was guilty of negligence.—Dougherty v. Yazoo & M. V. R. Co., Miss., 36 So. Rep. 699.

50. CARRIERS—Liability of Dominant Carrier.—Where defendant railway company in fact controlled the E. Railroad Company, by the negligence of which a passenger who had purchased a ticket over such road from defendant was killed, defendant held liable therefor.—Lehigh Valley R. Co. v. Dupont, U. S. C. C. of App , Second Circuit, 128 Fed. Rep. 840.

51. CARRIERS—Loss of Baggage.—Statutes permitting railroad companies to limit liability for loss of passenger's baggage by posting general notice held not to apply to loss of baggage by theft at station of departure.—Williams v. Central R. Co. of New Jersey, 88 N. Y. Supp. 434.

52. CARRIERS—Passenger on Platform of Blind Baggage Car.—One who got on the platform of a blind baggage car, though having a ticket, not having told the conductor that he had it, and the conductor not having seen it, held not entitled to recover as a passenger because the conductor pulled him off.—McGraw v. Southern Ry. Co., N. Car., 47 S. E. Rep. 758.

53. CARRIERS—Presumption of Negligence.—The fact that a train parts in transit raises a presumption of negligence against the carrier.—Feldschneider v. Chicago, M. & St. P. Ry. Co., Wis., 99 N. W. Rep. 1034.

54. CARRIERS — Wrongful Ejection of Passenger.—A passenger, who is rightfully on a railroad train, has a right to refuse to be ejected from it, and to make sufficient resistance to denote that he is being removed by compulsion and against his will.—Erie R. Co. v. Littell, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 546.

55. COLLISION—Contributory Fault.—When the negligence of one vessel is great, to condemn the other to a division of damages, the evidence must be clear and convincing that the situation required her to do more than she did to avoid the collision.—The Philip Minch, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 578.

56. COMPROMISE AND SETTLEMENT—Impeachment on Ground of Mistake of Fact.—A settlement cannot be impeached for mistake of fact, because the party complaining failed to draw an obvious inference from facts which were fully furnished to him by the other party —Daly v. Busk Tunnel Ry. Co., U. S. C. C. of App., Eighth Circuit, 129 Fed. Rep. 513.

57. CONSPIRACY — New Trial to Co-conspirator. — Where parties have been indicted for conspiracy, and found guilty, grant of a new trial to one does not require grant of new trial to any co-conspirators.—United States v. Cohn, U. S. C. C., D. N. Y., 128 Fed. Rep. 615.

58. CONSTITUTIONAL LAW—Allowance of Officer's Salary an Administrative Act.—The allowance of a claim for salary or compensation of a county officer by the board of commissioners was an administrative act and not a judgment, vesting a right thereto in such officer.—Tucker v. State, Ind., 70 N. E. Rep. 140.

59. CONSTITUTIONAL LAW—Construction by Contemporaneous Interpretation. — The contemporaneous construction of a constitutional provision, and the acquiescence of all departments of the government in such interpretation for 100 years, conclusively determines its meaning.—Levin v. United States, U. S. C. C. of App., Eighth Circuit, 128 Fed. Rep. 826.

60. CONSTITUTIONAL LAW—Due Process of Law.—Village Law, Laws 1897, p. 435, ch. 414, §280, as amended by Laws 1902, p. 1628, ch. 591, authorizing assessments for fire protection, held unconstitutional, as a taking of property without due process of law. — Village of Canaseraga v. Greene, 88 N. Y. Supp 539.

61. CONSTITUTIONAL LAW—Fraudulent Use of Mails.—A determination of the postmaster general that certain mail matter is nonmailable or that a person is using the mails with intent to defraud, held not reviewable by the court, if based on any credible evidence.—Missouri Drug Co. v. Wyman, U. S. C. C., E. D. Mo., 129 Fed. Rep. 623.

62. CONSTITUTIONAL LAW—Habitual Criminal Act.—Laws Iowa 27th Gen. Assem., p. 58, ch. 109, habitual criminal act, held not objectionable as an *ex post facto* law, on the ground that it allowed different testimony than that required at the time of the commission of the offense in order to convict accused.—State of Iowa v. Jones, U. S. D. C., S. D. Iowa, 128 Fed. Rep. 626.

63. CONSTITUTIONAL LAW—Libel.—Laws 1901, p. 784, ch. 557, relating to libel and applying to newspapers and periodicals, held not unconstitutional as creating a discrimination.—Osborn v. Leach, N. Car., 47 S. E. Rep. 811.

64. CONSTITUTIONAL LAW—Payment of Wages in Merchandise Orders.—Code 1902, §§ 2719, 2720, forbidding the issuance of any order or check for payment of wages payable otherwise than in lawful money of the United States, etc., but excepting agricultural contracts, or advances made for agricultural purposes, held not unconstitutional as denying equal protection of the laws.—Johnson, Lytle & Co. v. Spartan Mills, S. Car., 47 S. E. Rep. 695.

65. CONSTITUTIONAL LAW—Removal of Causes.—Act Sept. 26, 1903, § 5 (Loc. Acts 1903, p. 889), requiring the clerk of the Bessemer city court to deliver the papers in a cause on the filing of petition for removal, held not beyond legislative power in respect of vesting authority in one court to control or compel action by the clerk of another court.—Dudley v. Birmingham Ry., Light & Power Co., Ala., 36 So. Rep. 700.

66. CONSTITUTIONAL LAW—Right of Citizens to Organize.—The right of a citizen to organize persons in any pursuit for their improvement or advancement is a right protected by the federal constitution.—United States v. Moore, U. S. C. C., N. D. Ala., 129 Fed. Rep. 630.

67. CONSTITUTIONAL LAW—Street Railway's Control of Street.—Street railway company held to have no vested right to occupy a street, preventing city from granting to another company the right to put a car line on the same street.—Newport News & O. P. Ry. & Electric Co. v. Hampton Roads Ry. & Electric Co., Va., 47 S. E. Rep. 839.

68. CORPORATIONS—Creditor's Action.—It is not absolutely essential to a creditor's action that there should be a receiver.—Harrigan v. Gilchrist, Wis., 99 N. W. Rep. 909.

69. CORPORATIONS—One Person Holding Entire Stock.—The fact that one person owns all the stock of a corporation does not make such owner and the corporation one and the same person.—Ulmer v. Lime Rock R. Co., Me., 57 Atl. Rep. 1001.

70 CORPORATIONS—Rescinding Stock Subscription.—Action will lie in equity against corporation and individual directors to rescind stock subscription induced by their fraudulent representation.—Mack v. Latta, N. Y., 71 N. E. Rep. 97.

71. CORPORATIONS—Unpaid Subscriptions.—Unpaid subscriptions to stock in a corporation are to be sued for and recovered in the same manner as other assets.—Smathers v. Western Carolina Bank, N. Car., 47 S. E. Rep. 893.

72. COSTS—Against whom Assessed.—Costs incurred by the successful party for witnesses at the date fixed for trial held costs against the defeated party, who induced the court to erroneously continue the case for the term.—Southern Indiana Ry. Co. v. McCarrell, Ind., 71 N. E. Rep. 156.

73. COURTS—Diverse Citizenship.—Where defendants claimed that plaintiff had changed his domicile, so that he was a resident of the same state as defendants, in a suit in a federal court based on diverse citizenship, the burden was on defendants to prove such fact.—Eisele v. Oddi, U. S. C. C., D. Nev., 128 Fed. Rep. 941.

74. COVENANTS—Warranty of Title.—In an action for breach of a warranty of title, certain deeds and mortgages made by plaintiff's grantors were admissible, as bearing on the question of an alleged dedication by plaintiff's grantors while in possession of the property.—Kruger v. Constable, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 908.

75. CRIMINAL EVIDENCE—Declarations of Defendant.—Declarations of defendant, after prior assaults of B on him, as to his fear of B, held not admissible on a trial for assault on B in which B was the first assailant.—State v. Raymo, Vt., 57 Atl. Rep. 993.

76. CRIMINAL EVIDENCE—Waiver of Irregularity.—A conviction for felony will not be disturbed because no evidence was introduced that defendant was over 30 years of age.—Bradburn v. State, Ind., 71 N. E. Rep. 133.

77. CRIMINAL EVIDENCE—Former Proceedings as Bar.—Discharge of defendant because of absence of complainant in criminal prosecution held no bar to further prosecution.—State v. Munroe, R. I., 57 Atl. Rep. 1057.

78. CRIMINAL TRIAL—Presence of Accused.—Where a prisoner was duly arraigned, pleaded to the indictment, was present at the impaneling of the jury and gave testimony in his own behalf, it would be presumed that he was present when the verdict was received, in the absence of a showing by the record to the contrary.—State v. Swenson, S. Dak., 99 N. W. Rep. 1114.

79. CRIMINAL TRIAL—Refusal of Motion for Continuance.—Where accused had been given ample time to prepare her defense, refusal of her motion for continuance held proper.—State v. Wilson, Iowa, 99 N. W. Rep. 1060.

80. DAMAGES—Duty to Lessen.—Where plaintiff's chattels were wrongfully seized, broken and scatterd by defendants, plaintiff was entitled to recover their value without endeavoring to collect the same.—Eisele v. Oddie, U. S. C. C., D. Nev., 128 Fed. Rep. 941.

81. DAMAGES—Instructions Respecting Future Pain.—In an action for injuries, it was error to instruct that the jury "might" take future pain and suffering into consideration.—Hallum v. Village of Omro, Wis., 99 N. W. Rep. 1051.

82. DAMAGES—Value of Mare.—Plaintiff was entitled to show that the mare killed by defendant's railroad was of special value as a brood mare.—Campbell v. Iowa Cent. Ry. Co., Iowa, 99 N. W. Rep. 1061.

83. DAMAGES—Wrongful Assault.—Exemplary damages may be recovered for wrongful assault, founded in malice.—Blackmore v. Ellis, N. J., 57 Atl. Rep. 1047.

84. DEATH—Doctor's Bills and Burial Expenses.—Where, in an action for death, there is no evidence of payment by plaintiff of doctor's bills and burial expenses, an instruction authorizing their recovery is erroneous.—Portsmouth St. R. Co. v. Peed's Admr., Va., 47 S. E. Rep. 850.

85. DEATH—Failure of Statutory Beneficiaries.—Where a statute gives the administrator of deceased an action for death for the benefit of certain persons, the action cannot be maintained, if no such persons are in existence.—Chicago & E. R. Co. v. La Porte, Ind., 71 N. E. Rep. 166.

86. DISORDERLY HOUSE—Harboring Prostitutes.—One harboring prostitutes, whom she knows are plying their trade on her premises, is guilty of keeping a house of ill fame.—State v. Wilson, Iowa, 99 N. W. Rep. 1060.

87. DIVORCE—Laches in Asking for Alimony.—Where a wife obtained a divorce in 1896, alimony could not be allowed on a petition filed in 1901.—Johnson v. Matthews, Iowa, 99 N. W. Rep. 1064.

88. EMINENT DOMAIN—Electric Railway as an Additional Servitude.—The right to construct electric railways within the lines of public streets imposes no additional servitude.—Montclair Military Academy v. North Jersey St. Ry. Co., N. J., 57 Atl. Rep. 1001.

89. EMINENT DOMAIN—Public Purpose.—The transportation of limestone and other freight to and from the limekilns and stores along the line of the railroad is a public use.—Ulmer v. Lime Rock R. Co., Me., 57 Atl. Rep. 1001.

90. ESTOPPEL—Placing Title in Another.—Where one who was entitled to land caused it to be deeded to herself and husband jointly, and he mortgaged it, her children held estopped to defeat the title of the mortgagee.—Yokley v. Superior Drill Co., Ky., 80 S. W. Rep. 1153.

91. EVIDENCE—Undisputed Testimony of Interested Witness.—The undisputed reasonable evidence of one witness, though a party interested, should control as to a question of fact.—Harrigan v. Gilchrist, Wis., 99 N. W. Rep. 909.

92. EXECUTORS AND ADMINISTRATORS—Claims Due Estate.—Claims due estate may be prosecuted by the beneficiaries where the personal representative cannot or will not act.—Matheny v. Ferguson, W. Va., 47 S. E. Rep 886.

93. EXECUTORS AND ADMINISTRATORS—Interlocutory Judgment.—Court held to have power to amend an interlocutory judgment for the sale of a decedent's real estate by the entry of an *ex parte* order *nunc pro tunc*.—Palmer v. Terwilliger, 88 N. Y. Supp. 526.

94. EXECUTORS AND ADMINISTRATORS—Right to Recover on Bond of Predecessors.—Under the statute of Pennsylvania, an administrator d. b. n. is authorized to demand and recover from his predecessor in the administration or the sureties on his bond all money due and belonging to the estate of the decedent.—Hibberd v. Bailey, U. S. C. C. of App., Third Circuit, 129 Fed. Rep. 575.

95. EXPLOSIVES—Liability for Damage Due to Negligent Packing.—A company shipping tank of gas naptha to city held liable for the death of a city employee, caused by the negligent manner in which the tank was closed.—Standard Oil Co. v. Wakefield's Admr., Va., 47 S. E. Rep. 830.

96. FALSE IMPRISONMENT—Use of Middle Name in Law.—A person's middle name is not recognized in law, and the omission of the initial letter of such name in a warrant of arrest, or a mistake therein, is immaterial.—Cox v. Durham, U. S. C. C. of App., Eighth Circuit, 128 Fed. Rep. 870.

97. FIRE INSURANCE—Time for Filing Proofs of Loss.—A fire policy, requiring proofs of loss to be filed within 60 days, afforded a reasonable time to enable assured to comply therewith —Missouri Pac. Ry. Co. v. Western Assur. Co , U. S. C. C., D. Kan., 129 Fed. Rep. 610.

98. FRAUDS—False Representation. — False statement to owner of mortgaged real property that mortgagee would foreclose and the owner would lose all her interest in the property held to be an actionable fraud.—Fox v. Duffy, 88 N. Y. Supp. 401.

99. FRAUDULENT CONVEYANCES — Creditor's Bill.—A mere general creditor is not entitled to maintain a creditor's bill against a debtor and his grantee to set aside an alleged fraudulent conveyance.—Miller v. Drane, Wis., 99 N. W. Rep. 1017.

100. FRAUDULENT CONVEYANCES—Right to Restrain.—Where a creditor of defendant's wife had never obtained judgment against him, or a lien on his property, he was not entitled to an injunction to restrain him from disposing thereof.—Meyers v. Wedel, N. J., 57 Atl. Rep. 1008.

101. GIFTS—Causa Mortis.—When a gift is made in expectation of death, there is the implied condition that it is revocable by the recovery of the donor.—Peck v. Scofield, Mass., 71 N. E. Rep. 109.

102. GUARANTY — Notice of Default.—To hold absolute guarantor of payment of a nonnegotiable note, it is unnecessary to give notice of the default.—Pleasantville Mut. Loan & Building Soc. v. Moore, N. J., 57 Atl. Rep. 1034.

103. HIGHWAYS—Coaster Colliding with Wagon Left in Street.—One who left a vehicle standing in a street held not liable for injuries to plaintiff, who collided with the vehicle while coasting on the street.—Reusch v. Licking Rolling Mills Co., Ky., 80 S. W. Rep. 1168.

104. HIGHWAYS — Negligent Obstruction. — A person negligently obstructing a highway, causing an injury to a traveler, cannot defend by proof that the highway was not legally established or on the right of way of a railroad company.—Pewonka v. Stewart, N. Dak., 99 N. W. Rep. 1080.

105. HOMESTEAD—Abandonment.—Where a bankrupt occupied a homestead under a contract to purchase, his act in taking a lease from the owner after bankruptcy proceedings had been begun did not constitute an abandonment of the homestead.—Duffield v. Dosh, Iowa, 99 N. W. Rep. 1074.

106. HOMESTEAD — Agreement to Convey.—A deed of land obtained from the United States government, but not until after it had become a homestead under the state laws, is invalid without the signature of the grantor's wife.—Collins v. Bounds, Miss., 36 So. Rep. 689.

107. HUSBAND AND WIFE — Constitutional Provisions Respecting Separate Property.—Where by the constitution a married woman is vested with the power of disposing of her personal property, that power cannot be taken from her by the legislature.—Vann v. Edwards, N. Car., 47 S. E. Rep. 784.

108. HUSBAND AND WIFE—Joint Obligors.—A husband, joining his wife in the execution of a mortgage to secure notes given by her alone, held personally liable for the debt.—Vansell v. Carithers, Ind., 71 N. E. Rep. 158.

109. HUSBAND AND WIFE—Sale of Good Will of Business.—A covenant, on the sale of a business and good will, not to engage in a similar business, does not prevent the covenantor's wife from engaging in such business under her own name.—Fleckenstein Bros. Co. v. Fleckenstein, N. J., 57 Atl. Rep. 1025.

110. INFANTS—Repudiating Contract.—An infant cannot repudiate his contract, and invoke judicial remedies to restore him to his former position, until he makes, so far as he reasonably can, or offers to make, restitution.—Jones v. Valentines' School of Telegraphy, Wis., 99 N. W. Rep. 1043.

111. INJUNCTION—Liquor Ordinances.—An injunction will not lie to restrain a city from enforcing ordinances regulating the liquor traffic, on the ground that the ordinances are unreasonable, vexatious, and oppressive.—Paul v. City of Washington, N. Car., 47 S. E. Rep. 793.

112. JUDGES—Setting Aside an Order Granted by Predecessor —If a judge is satisfied that an order in a pending action was granted by his predecessor through mistake, or by fraud perpetrated upon the court, he may set such order aside.—Harrigan v. Gilchrist, Wis., 99 N. W. Rep. 909.

113. JUDGMENT—Res Judicata. — Where land belonging to plaintiffs was recovered by another in an action to which plaintiffs were not parties, the judgment was no bar to an action by plaintiffs to recover the land.—Smith v. Cornett, Ky., 80 S. W. Rep. 1188.

114. JURY — Qualification of Juror Having Claim Against Road.—In an action against a railroad company for personal injuries, a juror is not disqualified by reason of the fact that he has a claim against the company for personal injuries which he intends to prosecute.—Southern Ry. Co. v. Oliver, Va., 47 S. E. Rep. 862.

115. JURY—Right to Jury Trial.—Whether a statutory action is or is not triable by a jury is to be determined with reference to whether its general characteristics are those of an action at law or one in equity.—Harrigan v. Gilchrist, Wis., 99 N. W. Rep. 909.

116. LANDLORD AND TENANT — Duty to Repair. — A landlord is not bound to make repairs which become necessary during the term, in the absence of an express agreement so to do.—Lyon v. Buerman, N. J., 57 Atl. Rep. 1009.

117. LANDLORD AND TENANT—Liability of Lessor.—A lessor of a mill held not liable to an employee of the lessee for injuries caused by an explosion, though the lessor knew, when he leased the mill, that the boiler was dangerous.—Lovitt v. Creekmore, Ky., 80 S. W. Rep. 1184.

118. LARCENY — Offense Committed. — Where relator was attempting to steal a horse, but only obtained possession of the bridle and saddle, he could not be held for theft of the horse.—*Ex parte* Thrasher, Tex., 80 S. W. Rep. 1142.

119. LEASES—Covenant Against Assignment.—Where an assignment of a lease was valid as against the lessor, a demand for performance of the covenant to renew held properly made by the assignee.—Warner v. Cochrane, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 553.

120. LIFE INSURANCE—Parol Assignment.—An insured may, by parol, assign a life issurance policy to one having an insurable interest in his life.—Lockett v. Lockett, Ky., 80 S. W. Rep. 1152.

121. MANDAMUS—Costs on Dismissal.—On dismissal of a mandamus proceeding against city officers, an award of costs in favor of relator against the city, which was not a party to the proceeding, held error.—People v. Common Council of City of Mt. Vernon, 88 N. Y. Supp. 493.

122. MASTER AND SERVANT—Choosing the More Dangerous of Two Methods.—Where there is a comparatively safe and more dangerous way of discharging the duty known to the servant, it is negligence to select the more dangerous method.—Gilbert v. Burlington, C. P. & N. Ry. Co., U. S. C. C. of App., Eighth Circuit., 128 Fed. Rep. 529.

123. MASTER AND SERVANT— Defective Instruments.—A servant, in relying on the master's assurance to repair a defect, is not absolved from exercising due care.—Louisville Hotel Co. v. Kaltenbrun, Ky., 80 S. W. Rep. 1163.

124. MASTER AND SERVANT—Fellow Servants.—Where defendant furnished decedent's employer with a steam hoist, and an engineer to operate the same, and deceased was killed by such engineer's negligence, deceased and the engineer were not fellow servants.—Moran v. Carlson, 88 N. Y. Supp. 522.

125. MASTER AND SERVANT—Separate Masters in Same Work.—A winchman furnished by a shipowner held not a fellow servant of an employee of stevedores, discharging the ship under contract.—The Gladestry, U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 591.

126. MASTER AND SERVANT—Scaffolding.— Where an employer vountarily assumed to erect scaffolding for the use of bricklayers, he was liable for injuries to one of such bricklayers by the falling of the scaffolding, resulting from its negligent construction.—Chambers v. American Tin Plate Co., U. S. C. C. of App., Sixth Circuit, 129 Fed. Rep. 561.

127. MINES AND MINERALS — Specific Performance.—Where a lessor refused to perform a covenant to renew a lease, which was concurrent on the lessee's payment of a differential rent, the lessees or their assignees were entitled to tender the rent and demand specific performance, or refuse payment and treat the contract as erminated.—Warner v. Cochrane, U. S. C. C. of App., econd Circuit, 128 Fed. Rep. 553.

128. MOTIONS—Court Orders.—A judge's order is not tiated because it contains a caption and recites the me, place, and term of court at which it was entered. —*In re* Munson, 88 N. Y. Supp. 509.

129. MUNICIPAL CORPORATIONS—Duty to Repair Streets. —While a city is not bound to keep in repair a portion of a street occupied by the tracks of a steam railroad, it is bound to keep safe a portion occupied by tracks of a treet railroad.—Hyde v. City of Boston, Mass., 71 N. E. ep. 118.

130. MUNICIPAL CORPORATIONS—Failure to Notify Sure- of Embezzlement.—Failure of sergeant of city to inform surety on deputy's bond of embezzlements known to the sergeant held to preclude recovery from the surety.—American Bonding & Trust Co. v. Milstead, Va., 47 S. E. Rep. 853.

131. MUNICIPAL CORPORATIONS—Tailor's License Tax. —The city of Newport News held to have power to levy a license tax on the business of a tailor. Gordon Bros. v. City of Newport News, Va., 47 S. E. Rep. 828.

132. NAVIGABLE WATERS—Maintaining Fish Nets in Channel.—Owner of an island, on facts shown, held entitled to an injunction restraining defendant from maintaining fish nets in the channel leading thereto.—Reyburn v. Sawyer, N. Car., 47 S. E. Rep. 761.

133. NAVIGABLE WATERS—Title to River Bed.—The title to the bed of a navigable river between low-water mark and the line of navigability is in the state for the benefit of its citizens, and the riparian owner has certain rights beyond low-water mark.—Taylor, v. Commonwealth, Va., 47 S. E. Rep. 875.

134. NEGLIGENCE — Fireworks Exhibition. — Occurrence of injury from the falling stick of a rocket held not proof of negligence in firing the same.—Crowley v. Rochester Fireworks Co., 88 N. Y. Supp. 483.

135. NEGLIGENCE — Independent Contractor. — The owner rnd manager of a public amusement park held not liable for the injuries sustained to a person present for the purpose of witnessing an exhibition of fireworks by reason of the negligent act of a third person giving the exhibition.—Deyo v. Kingston Consol. R. Co., 88 N. Y. Supp. 487.

136. NEGLIGENCE—Presumption as to Instinct of Self-Preservation.—The presumption that instinct of self-preservation forbids imputation of recklessness arises only in absence of evidence of negligence.—Newport News Pub. Co. v. Beaumeist r, Va., 47 S. E. Rep. 821.

137. NUISANCE—Fireworks Exhibition. — Person injured by a fireworks exhibition held not entitled to recover irrespective of negligence on the ground of nuisance.—Crowley v. Rochester Fireworks Co., 88 N. Y. Supp. 483.

138. NUISANCE — Injunction. — The insolvency of defendant, so that a recovery would be of no avail, and the injury irreparable, furnishes ground for an injunction to abate a nuisance erected by defendant.—Reyburn v. Sawyer, N. Car., 47 S. E. Rep. 761.

139. OFFICERS—Liability of Surety on Officer's Bond. —Mere negligence on the part of the obligee in the bond of a public officer will not avoid the contract of suretyship, but good faith is all that is required.—American Bonding & Trust Co. v. Milstead, Va., 47 S. E. Rep. 853.

140. PARTITION — Appointment of Receiver in Partition.—The fact that the superior court appointed a receiver in partition to collect the rents and profits from the tenants in possession did not, even if erroneous, affect the petitioner's right to a partition.—McCarty v. Patterson, Mass., 71 N. E. Rep. 112.

141. PARTITION — Payment of Decedent's Debts.—Where a sale in partition of lands of a decedent has been made, a creditor may come in by petition to have the debts paid out of the proceeds of sale.—McKinley v. Coe, N. J., 57 Atl. Rep. 1030.

142. PARTITION—Title to Support Action. — Where a proceeding for partition is one at law, in which questions of title may be tried, as it appears to be under the law of Texas, on the trial of such an action in a federal court the legal title must prevail.—Lee v. Wysong, U. S. C. C. of App., Fifth Circuit, 128 Fed. Rep. 833.

143. PARTNERSHIP—Liability for Crime of Copartner. —A partner is not chargeable with the criminal acts of his copartner, unless he has knowledge thereof.—United States v. Cohn, U. S. C. C., S. D. N. Y., 128 Fed. Rep. 615.

144. PERPETUITIES — Unlawful Accumulation.—A testamentary provision that the net income of the estate shall be accumulated by the executor and used to pay off mortgages on the real estate is invalid.—Lowenhaupt v. Stanisics, 88 N. Y. Supp. 587.

145. PLEADING—Amendment.—Where a demurrer to a pleading is overruled and the pleading amended, the original goes out of the record, and on appeal cannot be tested by the ruling on the demurrer thereto.—Stewart v. Knight & Jillson Co., Ind., 71 N. E. Rep. 182.

146. PLEADING—Motion to Amend.—A motion during trial to amend pleadings to conform to the proof should not be denied where the amendment does not work a surprise on the opposing counsel.—Adams v. South Carolina & G. Extension R. Co., S. Car., 47 S. E. Rep. 693.

147. PLEDGES — Rights of Purchaser of Pledged Property.—One purchasing at a sale of pledged property by the pledgee has no greater title or rights than the pledgee acquired.—Harding v. Eldridge, Mass., 71 N. E. Rep. 115.

148. PRINCIPAL AND AGENT — Collection of Claims.—Execution and payment of a note given by a debtor to his creditors' attorney, which the latter discounted and converted the proceeds to his own use, held not a satisfaction of the debt.—Willis v. Gorrell, Va., 47 S. E. Rep. 826.

149. PRINCIPAL AND AGENT — Notice to Principal. — A principal, having knowledge of all the facts known to her agent, held chargeable with his fraud in effecting an exchange of property.—Cook v. Boyd, Iowa, 99 N. W. Rep. 1068.

150. POST-OFFICE—Fraudulent Use of Mails. — In a prosecution for using the mails in furtherance of a scheme to defraud, the fact that the scheme was impossible of execution on its face held immaterial.—O'Hara v. United States, U. S. C. C. of App., Sixth Circuit, 129 Fed. Rep. 551.

151. POST-OFFICE — Use of Mails to Defraud.—Where, in a prosecution for the use of the mails with intent to defraud, defendant claimed the power to heal persons at a distance without their knowledge, etc., the burden was on her to establish such fact.—United States v. Post, U. S. D. C., S. D. Fla., 128 Fed. Rep. 950.

152. PUBLIC LANDS—Agreement to Convey.—An agreement to convey land to be obtained from the United States under the homestead act held void.—Collins v. Bounds, Miss., 36 So. Rep. 689.

153. PUBLIC LANDS — Construction of Statute. — The words "public lands" are not always used in the same sense in acts of congress, and should be given such meaning in any act as comforts with its purpose and intent.—United States v. Blendaur, U. S. C. C. of App., Ninth Circuit, 128 Fed. Rep. 910.

154. RAILROADS—Killing Stock. — Failure of railroad company to give statutory signals at crossings may be shown to establish negligence on the part of such company.—Davis v. Southern Ry. Co., S. Car., 47 S. E. Rep. 723.

155. RAILROADS—Master and Servant —A railroad corporation operating a road jointly with another corporation is responsible for injury to its employees as a natural person would be for the liabilities of a firm of which he is a member.—Harrill v. South Carolina & G. Extension R. Co., N. Car., 47 S. E. Rep. 730.

156. RAILROADS—Noises Incidental to Operation.—A railroad company is not liable for the consequences of noises incidental to the operation of its trains in or near public streets.—Crowley v. Chicago, St. P., M. & O. Ry. Co., Wis., 99 N. W. Rep. 1016.

157. RAILROADS—Right to Transfer Franchise.—Railroad franchises must be exercised by the corporation to which they are granted, and by it alone.—Ulmer v. Lime Rock R. Co., Me., 57 Atl. Rep. 1001.

158. RECEIVERS—Accounting.—While the usual method of compelling a receiver to account is by summary proceedings, the court may permit the making of the receiver a defendant in a creditor's action.—Harrigan v. Gilchrist, Wis., 99 N. W. Rep. 909.

159. RECEIVERS—Foreclosure Suit by Foreign Receiver. —A special receiver of an insolvent building and loan association held properly permitted to maintain a suit in a federal court of another state to foreclose a mortgage given by a member on property therein.—Lewis v. Clark, U. S. C. C. of App., Ninth Circuit, 129 Fed. Rep. 570.

160. REFORMATION OF INSTRUMENT—Specific Performance.—Where a writing recites a dealing of the signer with himself, the court, on parol proof, will not require the owners of the land described in the writing to sign the same and then decree specific performance.—Kaster v. Mason, N. Dak., 99 N. W. Rep. 1083.

161. REMAINDERS—Loan by Trustee to Remainderman.—Loan of money by trustee of an estate to one of the estate's contingent remaindermen held not to operate as a lien or charge on the interest of the remainderman in the estate.—Wilson v. Langhorn, Va., 47 S. E. Rep. 871.

162. REMOVAL OF CAUSES—Right to Demand.—Where a suit by a federal receiver of a corporation did not raise any federal question, the fact that plaintiff was a receiver and appointed by a federal court did not entitle defendant to remove the cause to the federal court. —Pepper v. Rogers, U. S. C. C., D. Mass., 128 Fed. Rep. 987.

163. REPLEVIN—Failure to Prosecute.—Dismissal of action by plaintiff in replevin and his failure to return property or pay its value, held not to authorize an action on the bond.—Kentucky Land & Immigration Co. v. Crabtree, Ky , 80 S. W. Rep. 1161.

164. SALVAGE — Apportionment of Award. — Where effective salvage service was largely the result of fire equipment of the vessels rendering the service, the salvage should be apportioned, two-thirds to the vessels and one-third to the crew.—The J. Emory Owen, U. S. D. C., E. D. Wis., 128 Fed. Rep. 996.

165. SALES—Breach of Contract.—Where, after breach of a contract of sale, the seller sells the goods to establish their market price, such sale must be made within a reasonable period and in good faith, to obtain the best price.—Alden Speares Sons & Co. v. Hubinger, U. S. C. C. of App., Eighth Circuit, 129 Fed. Rep. 538.

166. SALES - Breach of Contract.—A notice by brokers, through whom a sale was made, that their customer would not receive further deliveries, held an unconditional breach of the contract.—Lincoln v. Levi Cotton Mills Co., U. S. C. C. of App., Second Circuit, 128 Fed. Rep. 868.

167. SALES—Fraud, Election of Remedies.—Vendor of goods held not estopped to sue for fraud in the purchase, though he has the purchase notes in his hands at time of trial.—Standard Sewing Mach. Co. v. Alexander, S. Car., 47 S. E. Rep. 711.

168. SPECIFIC PERFORMANCE—Sufficiency of Contract —Specific performance of a writing will not be enforced in the absence of consideration and mutual assent of the signers to all the terms of the writing.—Kaster v. Mason, N. Dak., 99 N. W. Rep. 1083.

169. STIPULATIONS—Stenographer's Notes.—A stipulation as to stenographer's notes taken at an examining trial held a waiver only of the production and proof thereof by the stenographer, and not a waiver of the irrelevancy of the contents.—Beavers v. Bowen, Ky., 80 S. W. Rep. 1165.

170. STREET RAILROADS—Action by Abutting Owner.—Where plaintiff sues street railway company as owner of fee in street, it cannot maintain the action as a mere abutter.—Kennedy v. Mineola H. & F. Traction Co., N Y., 71 N. E. Rep. 102.

171 SUBROGATION—Rights of Purchaser at Foreclosure Sale.—Purchasers of real estate of a bankrupt from a city for taxes are not subrogated to any legal rights of the city, which require the payment of such taxes from the bankrupt's personal estate.—*In re* Brinker, U. S. D. C., W. D. N. Y., 128 Fed. Rep. 634.

172. SUBROGATION—Surety on Bond.—Personal representative of surety on bond to secure payment by bank of receiver's deposits held subrogated to receiver's com-

missions; he being a co-surety.—*In re* Rock Hill Cotton Factory Co., S. Car., 47 S. E. Rep. 728.

173. TAXATION—Property Devised to Charitable Institutions.—Property devised to charitable institutions held not exempt from taxation until the estate is administered.—Commonwealth v. Williams' Exr., 47 S. E. Rep. 867.

174. TAXATION—Quieting Tax Sale Title.—In a suit by purchaser at tax sale to quiet his title, that the notice of purchase did not except from the description of the land therein a railroad right of way passing over the lands held no defense.—Flint Land Co.v. Godkin, Mich., 99 N. W. Rep. 1058.

175. TELEGRAPHS AND TELEPHONES — Damages for Failure to Deliver.—Plaintiff in action against a telegraph company for failure to deliver a message announcing the death of a person held not entitled to recover expenses of going to deceased.—Hunter v. Western Union Tel. Co., N. Car., 47 S. E. Rep. 745.

176. TENANCY IN COMMON—Relation, How Established. —Tenants in common may create the relation of landlord and tenant between themselves by an express oral agreement to that effect.—Smith v. Smith, Me., 57 Atl. Rep. 999.

177. TOWAGE—Manner of Making up Tow.—A barge which consents to being towed with another abreast, assumes whatever added risk arises from such method of towing.—Stricker v. The Maurice, U. S. D. C., E. D. Pa., 128 Fed. Rep. 652.

178. TRADE MARKS AND TRADE NAMES—Use of Name. —Where the name of a person has become so far associated with goods of a particular maker that its use by another may deceive, its use will be restrained.—International Silver Co. v. Wm. H. Rogers Corporation, N. J., 57 Atl. Rep. 1037.

179. TRIAL—Misconduct of Counsel.—Where counsel in argument to the jury went outside the record and indulged in abuse of opposing counsel, it was the duty of the court *sua sponte* to have interfered and stopped the same.—Beavers v. Bowen, Ky., 80 S. W. Rep. 1165.

180. TRUSTS—Creation.—Where one receives funds on an understanding that he is to invest them in securities and hold them for another, the holder has no equitable title to the securities.—Tucker v. Linn, N. J., 57 Atl. Rep. 1017.

181. TRUSTS—Enforcement of Constructive Trusts.—A constructive trust arises against one who, by falsely representing that he is acting for C, obtains from B property which B intended to give to C, whether C had an enforceable claim against B or not.—Johnston v. Reilly, N. J., 57 Atl. Rep. 1049.

182. TRUSTS—How Created.—In order to create a trust of personalty, there must be some qualifying act by which the donor's ownership of the fund is devested, followed by an acceptance by the person selected to act as trustee of the duties raised by the fiduciary relation.—Peck v. Scofield, Mass., 71 N. E. Rep. 109.

183. TRUSTS—Intention of Parties.—Where lands belonging to plaintiffs were recovered by another in an action to which they were not parties, he would be regarded as a trustee for plaintiffs.—Smith v. Cornett, Ky., 80 S. W. Rep. 1188.

184. TRUSTS—Investment of Proceeds.—Court will not interfere with discretion of trustee having the power to sell lands as to his investment of the proceeds thereof. —Campbell v. Virginia-Carolina Chemical Co., S. Car., 47 S. E. Rep. 716.

185. TRUSTS—Revocation.—Conveyance in trust by a life tenant held only a power of attorney to manage the property in the interest of the grantor, and revocable.— Angle v. Marshall, W. Va., 47 S. E. Rep. 882.

186. USE AND OCCUPATION—Landlord and Tenant.—A suit for the use and occupation of real estate cannot be maintained unless the relation of landlord and tenant exists.—Cambridge Lodge No. 9, K. P. v. Ronth, Ind., 71 N. E. Rep. 148.

187. VENDOR AND PURCHASER — Defect in Quantity of Land Conveyed.—A vendee cannot be required to accept a city lot materially less in size than indicated by the contract, unless the premises designated by the street number were in fact smaller in area.—Raben v. Risnikoff, 88 N. Y. Supp. 470.

188. VENDOR AND PURCHASER — Fraudulent Representations.—Misrepresentation as to the amount of corn on certain land at the time of sale thereof held insufficient to establish a fraudulent sale.—Sohan v. Gibson, Ky., 80 S. W. Rep. 1173.

189. VENDOR AND PURCHASER — Unrecorded Instrument.—A conveyance of lands by the heir of the owner of record of an undivided half interest held to pass the legal title, as against an unrecorded instrument executed by the grantor's ancestor.—Lee v. Wysong, U. S. C. C. of App., Fifth Circuit, 128 Fed. Rep. 833.

190. WILLS—Extrinsic Evidence of Intention.—Letter written by testator to his residuary legatee held admissible to show his intention in making an obscure codicil.—Ladies' Union Benev. Soc. v. Van Netta, 88 N. Y. Supp. 413.

191. WITNESSES—Attacking Character for Chastity.— Question attacking character for chastity of witness on cross-examination for purpose of discrediting her is properly excluded.—Kennington v. Catoe, S. Car., 47 S. E. Rep. 719.

192. WITNESSES — Competency. — The compensation received by a surveyor of land involved in ejectment is not such a disqualifying interest as to render proof of a declaration by the surveyor as to the boundary incompetent.—Westfeldt v. Adams, N. Car., 47 S. E. Rep. 816.

193. WITNESSES—Defective Highways.—In an action for injuries by an alleged defective highway, defendant held not estopped by evidence of one of its witnesses from introducing other evidence to rebut plaintiff's evidence as to the condition of the highway.—Kennedy v. Town of Lincoln, Wis., 99 N. W. Rep. 1038.

194. WITNESSES — Examination.—Where a party to an action is called by his adversary for cross-examination, whether his examination may be continued by his own counsel is in the discretion of the court.—Olson v. Aubolee, Minn., 99 N. W. Rep. 1128.

195. WITNESSES — Physicians. — Under a statute disqualifying physicians from testifying to communications, etc., made by their patients, a physician held incompetent to testify in a will contest between testator's heirs as to facts learned by him while attending testator professionally.—Towles v. McCurdy, Ind., 71 N. E. Rep. 129.

196. WITNESSES — Prejudice.—Prejudices of witnesses against defendant can be considered by the jury only when the witnesses' feeling of animosity was such as to influence their testimony.—United States v. Post, U. S. D. C., S. D. Fla., 128 Fed. Rep. 950.

197. WITNESSES—Testimony as to Speed of Car.—In an action for the death of one run over by a street car, testimony of a witness as to the speed of the car held admissible, though he observed it from inside a building. —Portsmouth St. R. Co. v. Peed's Admr., Va., 47 S. E. Rep. 850.

198. WITNESSES—Testimony Given at Former Trial.— The testimony of a witness for the state on a trial of one charged with crime cannot be shown by the state calling the witness as a witness on a subsequent trial of the accused.—State v. Callahan, S. Dak., 99 N. W. Rep. 1100.

199. WITNESSES—Testimony on a Former Trial.— Stenographers' notes of testimony on a former trial may not be referred to for the purpose of contradicting a witness.—Portsmouth St. R. Co. v. Peed's Admr., Va., 47 S. E. Rep. 850.

200. WORK AND LABOR — Quantum Meruit.—Plaintiff's remedy for services performed under an agreement void under the statute of frauds held to be by suit upon a *quantum meruit*.—Booker v. Heffner, 88 N. Y. Supp. 499.